

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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In the Matter of H. J. BRENEMAN, Bankrupt.

H. J. BRENEMAN,

Petitioner,

vs.

M. F. CORRIGAN, as Trustee in Bankruptcy of the  
Estate of H. J. BRENEMAN, Bankrupt,  
Respondent.

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**P**etition for Revision

Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, an Order of the United States District Court for the District of Oregon.

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**FILED**

SEP 20 1924

F. D. MONCKTON,  
CLERK



**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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**Petition for Revision**

**Under Section 24b of the Bankruptcy Act of Con-  
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United States District Court for  
the District of Oregon.**

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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The first part of the history is devoted to a description of the country and its inhabitants. The author describes the various tribes and their customs, and the different parts of the country. He also mentions the various wars and battles that have taken place in the country.

The second part of the history is devoted to a description of the government and the laws of the country. The author describes the different forms of government that have been used in the country, and the various laws that have been enacted. He also mentions the different courts and the various officers of the government.

The third part of the history is devoted to a description of the commerce and the industry of the country. The author describes the different kinds of goods that are produced in the country, and the various ways in which they are traded. He also mentions the different kinds of industry that are carried on in the country.

The fourth part of the history is devoted to a description of the religion and the customs of the country. The author describes the different religions that are practiced in the country, and the various customs that are observed. He also mentions the different kinds of festivals and the various ways in which the people celebrate them.



United States Circuit Court of Appeals for the  
Ninth Circuit.

In the Matter of H. J. BRENEMAN, Bankrupt.

PETITION OF BANKRUPT TO REVIEW  
UNDER SECTION 24b.

To the Honorable, the Judges of the Circuit Court  
of Appeals for the Ninth Circuit:

Your petitioner, H. J. Breneman, bankrupt,  
hereby represents as follows:

I.

That on the 21st day of September, 1921, H. J. Breneman, bankrupt, filed his petition and schedules in bankruptcy in the District Court of the United States for the District of Oregon, and thereafter on said date was duly adjudged a bankrupt, and a reference of said matter was made to Hon. A. M. Cannon, Referee in Bankruptcy of said Court.

II.

That said bankrupt duly and properly made the following claim of homestead in his schedules in bankruptcy under the heading "Statement of Property Claimed as Exempt by Your Petitioner":

"Homestead upon which your petitioner has lived and occupied as his home since 1914, of which the following is a description:

Commencing at a point 2278 chains west of the southeast corner of the S. F. Staggs and Minerva J. Staggs Donation Land Claim, Notification No. 1211, claim No. 55, in Township 4 South of Range 4 West of the Willamette

Meridian, and running thence west 7.51 chains; thence north  $13\frac{1}{3}$  chains; thence east 7.51 chains; thence south  $13\frac{1}{3}$  chains to the place of beginning, containing about 10 acres; also the west half of the South Park subdivision, the same being a subdivision in the above-named and numbered Donation Land Claim of S. F. Staggs and wife, containing  $12\frac{1}{2}$  acres of land, as the same appears upon the duly recorded plat of said subdivision now on record in the office of the Recorder of Conveyances in and for Yamhill County, State of Oregon."

### III.

That thereafter M. F. Corrigan was duly elected Trustee in Bankruptcy of said estate of H. J. Breneman, and qualified as such Trustee.

### IV.

That said Trustee failed and refused to set aside said property claimed by said bankrupt as above set forth or any part thereof as exempt, or to make any report concerning said homestead exemption whatsoever.

### V.

That on the 13th day of June, 1923, the said bankrupt filed his duly verified petition with the Referee in Bankruptcy herein, setting forth that he had maintained his home or residence upon said property ever since and long before the filing of the petition in bankruptcy, and claimed the same as exempt and prayed that the same might be set aside to him as exempt.

VI.

That thereafter on the 19th day of June, 1923, M. F. Corrigan, Trustee herein, filed a petition for an order to show cause why said property should not be sold free and clear of liens.

VII.

That thereafter on the 12th day of July, 1923, the bankrupt filed an answer to the petition for the show cause order setting forth that both prior to, and after the filing of said petition in bankruptcy, he had paid the taxes on said property heretofore described, and that he was awaiting steps to be taken by the Trustee looking toward the adjudication of his exemption rights in the property in question. That no action had been taken in this regard by the Trustee and that therefore, he, the bankrupt, had filed a petition in said Court to have the said homestead set aside as exempt and prayed that the said property be so set aside.

VIII.

That thereafter on the 17th day of July, 1923, the Trustee in bankruptcy filed an answer to the bankrupt's petition for exemption, alleging that said property was not used as a homestead by the bankrupt; that the value of same is greater than allowed by the statutes of Oregon, as exempt; that the bankrupt had failed to claim the property as exempt in a suit brought in a State Court; that the bankrupt had failed to account to the Trustee for the rents and income upon said property, and that the Trustee had filed a petition to sell said property free and clear of liens, and praying that

said claim of the bankrupt for exemption of said property be denied.

### IX.

That thereafter the said matter came on for hearing before the Hon. A. M. Cannon, Referee in Bankruptcy on said petitions and answers, and the said Referee in Bankruptcy, on the 22d day of January, 1924, made an order allowing the petition of the Trustee to sell said property free and clear of liens and denying the petition of H. J. Breneman to have his homestead set aside as exempt for the reason that an exemption it was asserted could not be claimed under the laws of the State of Oregon in property held by a man and his wife as an estate by the entirety.

### X.

That thereafter on the 8th day of February, 1924, the bankrupt, feeling aggrieved by said order, filed a petition for review upon said order, and thereafter on the 2d day of April, 1924, the District Court of the United States for the District of Oregon made an order confirming the order of the Referee.

### XI.

All of the foregoing will be made to appear more fully to your Honors by a transcript of the record which will be transmitted to this Court.

### XII.

That said order was and is erroneous as a matter of law, in that,

(1) Said Trustee should have been ordered and required to set aside as exempt the real property

claimed, at least to the extent of \$3000.00 in value.

(2) That the order of the Referee should have been reversed and said property allowed as exempt.

(3) That the order of the Referee should have been reversed and the petition of the Trustee to sell said property free and clear of liens should have been disallowed.

(4) That the order of the Referee should have been reversed and the petition of the bankrupt for an order allowing his exemption in the real property claimed should have been allowed.

WHEREFORE, your petitioner feeling aggrieved because of said order, asks that the same be revised in matters of law by this Honorable Court as provided in Section 24-b of the Bankruptcy Act, and the rules and practices in such case made and provided, and that the same be reversed and an order made allowing the bankrupt his exemption in the property claimed as exempt; and for such other and further relief as may be just and proper.

Dated at Portland, Oregon, this 16th day of May, 1924.

H. J. BRENEMAN,  
Petitioner.

SIDNEY TEISER,  
W. L. COOPER,  
Attorneys for Petitioner.

United States of America,  
District of Oregon,  
County of Multnomah,—ss.

I, H. J. Breneman, being first duly sworn, on oath depose and say: That the facts set forth in the foregoing petition are true as I verily believe.

H. J. BRENEMAN.

Subscribed and sworn to before me this 16th day of May, 1924.

[Seal]

SIDNEY TEISER,  
Notary Public for Oregon.

My commission expires Dec. 27, 1924.  
State of Oregon,  
County of Multnomah.

Due service of the within petition for review is hereby accepted in Multnomah County, Oregon, by receiving a copy thereof duly certified.

WM. B. LAYTON,  
E. A. B.  
Attorney for Trustee.

May 16, 1924.

United States Circuit Court of Appeals for the  
Ninth Circuit.

In the Matter of H. J. BRENNEMAN, Bankrupt.

NOTICE OF FILING PETITION FOR RE-  
VIEW.

To M. F. CORRIGAN, Esq., Trustee in Bank-  
ruptcy of the Estate of H. J. Breneman, Bank-  
rupt, and to WILLIAM B. LAYTON and N.  
RAE ALBER, His Attorneys:

You, and each of you, are hereby notified that on  
the 20th day of May, 1924, at the hour of ten o'clock  
in the forenoon of said day, we will file in the office  
of the Clerk of the Circuit Court of Appeals for  
the Ninth Circuit, in the City of San Francisco,  
California, a Petition for Review in the above-  
entitled cause, a copy of which petition is hereto  
annexed as a part of this Notice.

Dated at Portland, Oregon, May 16th, 1924.

W. L. COOPER,  
SIDNEY TEISER,  
Attorneys for Bankrupt.

United States of America,  
State of Oregon,  
County of Multnomah.

Due service of the within notice is hereby ac-  
cepted in Multnomah County, Oregon, by receiving  
a copy thereof duly certified.

WM. B. LAYTON,  
E. A. B.  
Attorney for Trustee.

May 16, 1924.

[Endorsed]: No. 4255. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of H. J. Breneman, Bankrupt. H. J. Breneman, Petitioner, vs. M. F. Corrigan, as Trustee in Bankruptcy of the Estate of H. J. Breneman, Bankrupt, Respondent. Petition for Revision Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, an Order of the United States District Court for the District of Oregon.

Filed May 20, 1924.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.



**United States**  
**Circuit Court of Appeals**

**For the Ninth Circuit.**

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In the Matter of H. J. BRENEMAN, Bankrupt.

H. J. BRENEMAN,

Petitioner,

vs.

M. F. CORRIGAN, as Trustee in Bankruptcy of the  
Estate of H. J. BRENEMAN, Bankrupt,  
Respondent.

---

**TRANSCRIPT OF RECORD IN SUPPORT  
OF PETITION FOR REVISION**

Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in  
Matter of Law, an Order of the  
United States District Court for  
the District of Oregon.

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In the United States Circuit Court of Appeals for  
the Ninth Circuit.

In the Matter of H. J. BRENEMAN, Bankrupt.

NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD:

SIDNEY TEISER, Morgan Building, Portland,  
Oregon, and W. L. COOPER, Chamber of  
Commerce, Portland, Oregon,  
For the Bankrupt.

WILLIAM B. LAYTON, Pittock Block, Portland,  
Oregon,  
For the Trustee.

In the District Court of the United States for the  
District of Oregon.

July Term, 1921.

BE IT REMEMBERED, That on the 21st day  
of September, 1921, there was duly filed in the  
District Court of the United States for the District  
of Oregon, a petition in bankruptcy with Schedules  
A and B, annexed thereto. The portion thereof  
designated by the praecipe for transcript filed  
herein is in words and figures as follows, to wit:

[1\*]

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\*Page-number appearing at foot of page of original certified Petition for Revision.

In the District Court of the United States for the  
District of Oregon.

In the Matter of H. J. BRENEMAN, Bankrupt.

PETITION IN BANKRUPTCY.

\* \* \* \* \*

SCHEDULE B(3).

STATEMENT OF THE PROPERTY CLAIMED  
AS EXEMPT BY YOUR PETITIONER.

\* \* \* \* \*

HOMESTEAD upon which your petitioner has lived and occupied as his home since 1914, of which the following is a description:

Commencing at a point 2278 chains west of the southeast corner of the S. F. Staggs and Minerva J. Staggs Donation Land Claim, Notification No. 1211, claim No. 55, in Township 4 South of Range 4 West of the Willamette Meridian, and running thence west 7.51 chains; thence north  $13\frac{1}{3}$  chains; thence east 7.51 chains; thence south  $13\frac{1}{3}$  chains to the place of beginning, containing about 10 acres; also the west half of the South Park subdivision, the same being a subdivision in the above named and numbered Donation Land Claim of S. F. Staggs and wife, containing  $12\frac{1}{2}$  acres of land, as the same appears upon the duly recorded plat of said subdivision now of record in the office of the Recorder of Conveyances in and for said County and State.

Deed to this property is a joint deed to myself and wife with a life lease to my wife's father, John

F. Allison, and for which we have to pay \$265.14 each and every year during the life of my wife's father, John F. Allison. The estimated value of the interest of your petitioner is hard to determine, however, I will say that I would estimate it at about \$2,000.00 [2]

---

AND AFTERWARDS, to wit, on the 13th day of June, 1923, there was duly filed with the Referee in Bankruptcy a petition of the bankrupt for an order setting aside exemptions, in words and figures as follows, to wit: [3]

In the District Court of the United States for the District of Oregon.

No. —.

In the Matter of H. J. BRENEMAN, Bankrupt.  
PETITION FOR ORDER SETTING ASIDE  
EXEMPTIONS.

Comes now the above-named petitioner and prays the Court for a decree setting aside all the property enumerated and claimed by the bankrupt in his petition filed herein, being Schedule "B," and your petitioner has maintained his home or residence upon said property ever since and long before the filing of this petition, as exempt property; which property is described as follows:

Commencing at a point 2278 chains west of the southeast corner of the S. F. Staggs and Minerva J. Staggs Donation Land Claim, Notification No. 1211, claim No. 55, in Township

4 South of Range 4 West of the Willamette Meridian, and running thence West 7.51 chains; thence north  $13\frac{1}{3}$  chains; thence east 7.51 chains; thence south  $13\frac{1}{3}$  chains to the place of beginning, containing about ten acres; also the west half of the South Park subdivision, the same being a subdivision in the above-named and numbered Donation Land Claim of S. F. Staggs and wife, containing  $12\frac{1}{2}$  acres of land, as the same appears upon the duly recorded plat of said subdivision now of record in the office of the Recorder of Conveyances in and for said County and State.

Deed to this property is a joint deed to myself and wife, with a life lease to my wife's father, John F. Allison, and for which we have to pay \$265.14 each and every year during the life of my wife's father, John F. Allison. The estimated value of the interest of your petitioner is hard to determine; however, I will say that I would estimate it at about \$2,000.00.

That the trustee in bankruptcy, M. F. Corrigan, has not set aside the property as required by law, but has permitted suits to be filed and a judgment to be obtained against said property; and said property was sold to one D. M. Nayburger upon a judgment secured in the Circuit Court of the State of Oregon for the County of Yamhill, on the 17th day of June, 1922; said sale being confirmed on February 10th, 1923; and the trustee in bankruptcy made no objection to the confirmation of said sale.

And your petitioner is entitled to a homestead exemption, and when granted, will be in a position to file a suit to set aside said judgment [4] secured by D. M. Nayburger.

WHEREFORE, your petitioner prays for a decree setting aside the above-described property as exempt, being the homestead of your petitioner.

W. L. COOPER,

Attorney for Petitioner.

H. J. BRENEMAN,

Petitioner.

United States of America,  
District of Oregon,—ss.

I, H. J. Breneman, petitioner herein described, in the foregoing petition, do hereby make certified oath that the statements therein are true and correct to the best of my knowledge, information and belief.

H. J. BRENEMAN.

Subscribed and sworn to before me this 11th day of June, 1923.

[Seal]

PAUL R. HENDRICKS,

Notary Public for Oregon.

My commission expires March 16, 1924.

Filed with the Referee: June 13, 1923. A. M. Cannon, Referee in Bankruptcy.

Filed February 27, 1924. G. H. Marsh, Clerk.

[5]

AND AFTERWARDS, to wit, on the 19th day of June, 1923, there was duly filed with the Referee in Bankruptcy, a petition of the Trustee to sell real estate free of liens, in words and figures as follows, to wit: [6]

In the District Court of the United States for the District of Oregon.

In the Matter of EDITH BRENEMAN, Bankrupt.

PETITION TO SELL REAL ESTATE FREE OF LIENS.

Comes now M. F. Corrigan, the duly elected, qualified and acting Trustee of the above-entitled estate in bankruptcy and respectfully reports to the Court and petitions as follows:

That by order of the District Court of the United States for this district, on the 30th day of April, 1923, it was adjudged that your Trustee, together with the Trustee of the Estate of H. J. Breneman, is the holder of the title of and is entitled to the possession of the following-described real estate:

Beginning at an iron pipe set for the quarter section corner of the south line of Section No. 13 in T. 5 S. R. 4 West of the Willamette Meridian in said Yamhill County, Oregon; thence running north 89 degrees 24 minutes east 33.49 chains to an iron pipe set in center of County road now there; thence north 52' along center of said road 16.93 chains to an iron pipe set at an angle in said road; thence running north



15 degrees 33 minutes east along center of said road 9.393 chains to an iron rod; thence running west 50.583 chains to an iron pipe on west line of lot No. 11 of Walnut Hill Pat. No. 2; thence south along west line of said Lot 11; thence east 5.80 chains to southeast corner of said Lot No. 11 above named; thence south 12.93 chains to the southeast corner of said Walnut Hill plat No. 2 above named on section line; thence east 8.52 chains to place of beginning and containing 120 acres more or less.

Your trustee is informed that one D. M. Nayberger of McMinnville, Oregon, and one John F. Allison of McMinnville, Oregon, claims some lien on said real estate, the exact nature and amount of which is unknown to your trustee. [7]

Your trustee is also informed that there are certain tax delinquency certificates against part of said property, and there are certain taxes due to the State of Oregon on the whole of said property.

Your trustee is informed and believes that the reasonable value of said real estate is in excess of any of the amounts of such taxes and liens which may be against it, and that it will be for the best interests of this estate that said property be sold, free from liens.

WHEREFORE your trustee prays for an order of this Court requiring said Nayberger and said Allison and the Bankrupt herein to show cause before this Court at a time to be specified by this Court why an order should not be entered per-

mitting and authorizing your trustee to sell said real estate free from liens, and for such other and further orders as may be necessary and proper.

M. F. CORRIGAN,  
Trustee.

United States of America,  
State of Oregon,  
County of Yamhill,—ss.

I, M. F. Corrigan, being first duly sworn, depose and say that I am Trustee of the within-entitled estate; that I have read and signed the foregoing petition, and that the same is true, as I verily believe.

M. F. CORRIGAN.

Subscribed and sworn to before me this 11th day of June, 1923.

[Notary Seal]

C. KNEALE,  
Notary Public for Oregon.

My commission expires April 11, 1927.

Filed June 19, 1923. A. M. Cannon, Referee in Bankruptcy.

Filed February 27, 1924. G. H. Marsh, Clerk.  
[8]

---

AND AFTERWARDS, to wit, on the 12th day of July, 1923, there was duly filed with the Referee in Bankruptcy an answer of the bankrupt to the petition of the Trustee to sell real estate free from liens, in words and figures as follows, to wit: [9]

In the District Court of the United States for the  
District of Oregon.

No. 6404.

In the Matter of H. J. BRENNEMAN, Bankrupt.

ANSWER TO PETITION OF TRUSTEE TO  
SELL REAL ESTATE FREE FROM LIENS.

Comes now the above-named bankrupt and for answer to the petition of the trustee, M. F. Corrigan, not in accordance with the Order to show cause why the trustee should not be authorized to sell the property described in the petition, as follows:

Beginning at an iron pipe set for the quarter section corner of the south line of Section No. 13 in T. 5 S. R. 4 West of the Willamette Meridian in said Yamhill County, Oregon; thence running north 89 degrees 24 minutes east 33.49 chains to an iron pipe set in center of County road now there; thence north 52' along center of said road 16.93 chains to an iron pipe set at an angle in said road; thence running north 15 degrees 33 minutes east along center of said 9.393 chains to an iron rod; thence running West 50.583 chains to an iron pipe on west line of lot No. 11' of Walnut Hill Pat. No. 2; thence south along west line of said lot 11; thence east 5.80 chains to southeast corner of said lot No. 11 above named; thence south 12.93 chains to the southeast corner of

said Walnut Hill plat No. 2 above named on Section line; thence east 8.52 chains to place of beginning and containing 120 acres more or less.

Free and clear of all liens, would respectfully show:

I.

That your bankrupt was duly adjudged a bankrupt on September 21st, 1921; and just prior to filing said petition, he paid taxes assessed against said property amounting to \$94.17, as shown by the receipts hereto attached and made a part hereof.

That on September 26th, 1922, he paid taxes amounting to \$97.98, on the above-described property and improvements, less amount of personal tax; and that your petitioner would have paid the taxes assessed and levied for the year 1922, but there was a petition for a review in progress during the time, and that your bankrupt has been in the possession of said property, and is now in possession of said property as his homestead, and has a petition with the Honorable Court for setting aside his homestead; and that M. F. Corrigan, in his brief [10] in the District Court, through his attorney, made the following statement:

“As soon as it is finally and definitely determined whether or not the Trustee takes title to this property, the Trustee will then take such steps as may be necessary to have the bankrupts’ exemption rights adjudicated.”

That the bankrupt has filed with this Court, his petition to have his homestead set aside and neither

the Trustee nor the Court has set aside the homestead; but as soon as that is done, and your bankrupt is reimbursed for the taxes, he has no objection to the order of sale.

WHEREFORE, having fully answered the petition of the Trustee, asks that the Court and Trustee set aside all of said property that is exempt under the law, being his homestead; and that he be reimbursed for the excess amount of taxes paid; and for such other and further relief as to the Court seems meet and equitable.

W. L. COOPER,  
Attorney for Bankrupt.

H. J. BRENEMAN,  
Bankrupt.

United States of America,  
State of Oregon,  
County of Multnomah,—ss.

I, H. J. Breneman, being first duly sworn depose and say, that I am the bankrupt of the within estate, and that I have read the foregoing answer and that the same is true as I verily believe.

H. J. BRENEMAN,  
Bankrupt.

Subscribed and sworn to before me this 5th day of July, 1923.

E. EARL FEIKE,  
Notary Public for Oregon.

My commission expires May 28, '27. [11]

State of Oregon,  
County of Multnomah,—ss.

Due service of the within answer is hereby accepted, this 10th day of July, 1923, by receiving a copy thereof, duly certified to as such by W. L. Cooper, attorney for bankrupt, H. J. Breneman.

WM. B. LAYTON,  
Attorney for Trustee.

Filed July 12, 1923. A. M. Cannon, Referee in Bankruptcy.

Filed February 27, 1924. G. H. Marsh, Clerk.  
[12]

---

AND AFTERWARDS, to wit, on the 17th day of July, 1923, there was duly filed with the Referee in bankruptcy an answer of the Trustee to the petition of Bankrupt for exemptions, in words and figures as follows, to wit: [13]

In the District Court of the United States for the  
District of Oregon.

In the Matter of H. J. BRENEMAN, Bankrupt.

ANSWER TO BANKRUPT'S PETITION FOR  
EXEMPTIONS.

Comes now M. F. Corrigan, the duly elected, qualified and acting Trustee of the above estate in bankruptcy, and for answer to the bankrupt's petition for exemptions, denies each and every allegation therein contained except as hereinafter affirma-

tively and expressly admitted, and alleges as follows:

I.

That said property was claimed by said bankrupt to be no part of the assets of this estate by virtue of the fact that title to said property was held by said bankrupt and his wife as tenants by the entirety; that the wife of said bankrupt has also been adjudged a bankrupt, and the Trustee of this estate is Trustee of her estate, and that by order of the District Court of the United States for the District of Oregon, on the 30 day of April, 1923, said property was adjudged to be an asset of this estate, a copy of which order is hereto attached and by reference made part and portion of this answer, the same as if fully set out herein.

II.

That said bankrupt has failed, neglected and refused to comply with the orders of this Court and to turn said property over to your Trustee, and the wife of said bankrupt now claims to be in possession of said property. [14]

III.

That said property at the time of filing the petition herein was not used as a homestead by said bankrupt and has not since been used as a homestead; that on one occasion said property was abandoned by both of said bankrupts. Their principal place of abode has been elsewhere.

IV.

That said property is greater in area than that allowed to be exempt by virtue of the statutes of

the State of Oregon, and said property is greater in amount than that allowed to be exempted by virtue of the statutes of the State of Oregon. Your Trustee is informed and believes, and therefore alleges the fact to be, that the reasonable value of said property is \$8,000.00, or more.

#### V.

That prior to the filing of said petition in bankruptcy one D. M. Nayburger started a certain action in the Circuit Court of the State of Oregon, for the County of Yamhill, against the said bankrupt and his wife on a joint claim for family necessities, and did recover judgment on said claim, and said property was sold under execution of said judgment, and said D. M. Nayburger bid the same in for the face of his said claim and said bankrupt and his wife failed, neglected and refused to assert or claim any homestead exemption in or to said property at or before said execution sale, and did thereby waive all claims to exemptions in and to said property.

#### VI.

That said bankrupt, during the pendency of these proceedings, has received certain rents, profits and income from said property, the exact amount of which is unknown to your Trustee; that said bankrupt has failed, neglected and refused to account to your Trustee for any of said rent, profits or income. [15]

#### VII.

That your Trustee in this estate and in the estate of Edith Breneman, a bankrupt, has filed a certain



petition to sell said property free of liens to protect the equity of redemption in this estate and in the estate of Edith Breneman as to said judgment of said D. M. Nayburger.

WHEREFORE your Trustee prays for an order of this Court denying the claim of said bankrupt for the exemption of said property, and for such other and further orders that may be necessary and proper.

(Signed) M. F. CORRIGAN,  
Trustee. [16]

State of Oregon,  
County of Yamhill,—ss.

I, M. F. Corrigan, being first duly sworn, depose and say that I am Trustee in the above-entitled estate; that I have read and subscribed the foregoing answer to bankrupt's petition for exemptions, and that the statements therein contained are true as I verily believe.

(Signed) M. F. CORRIGAN.

Subscribed and sworn to before me this 22 day of June, 1923.

[Notarial Seal] (Signed) M. H. KENDALL,  
Notary Public for Oregon.

My commission expires Sept. 1, 1923.

State of Oregon,  
County of Multnomah,—ss.

Due and legal service of the within answer is hereby accepted in Multnomah County, Oregon, this 10 day of July, 1923, by receiving a copy

thereof, duly certified to as such by attorneys for trustee.

W. L. COOPER,  
Attorney for Bankrupt.

Filed July 17, 1923. A. M. Cannon, Referee in Bankruptcy.

Filed February 27, 1924. G. H. Marsh, Clerk.  
[17]

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AND AFTERWARDS, to wit, on the 27th day of February, 1924, there was duly filed in said court, a copy of the order of the Referee in Bankruptcy on the petition of the Trustee to sell real property free from liens, and petition of bankrupt for exemptions, in words and figures as follows, to wit: [18]

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In the District Court of the United States for the District of Oregon.

In the Matter of H. J. BRENEMAN, Bankrupt.

ORDER ON PETITION OF THE BANKRUPT  
TO SET ASIDE HOMESTEAD EXEMPTION  
AND OF THE TRUSTEE TO SELL  
FREE FROM LIENS.

This matter now comes on to be heard on the petition of the Trustee to sell real property described in the schedules of the bankrupt free from liens thereon, and on petition of the bankrupt to

set aside his homestead exemption thereon. The rights of the respective parties in this property have been before the court on petitions for possession, etc., and it has been decided that the Trustee of the two estates has succeeded to the entire estate by operation of law, inasmuch as both husband and wife filed petitions in bankruptcy, so that unless the bankrupt, H. J. Breneman, is entitled to the homestead exemption in the property the petition of the Trustee to sell free from liens should be granted.

I think the standing of H. J. Breneman as a homestead claimant should be determined as of the date he filed his petition setting up his right to a homestead in the property. What has happened since that date by the filing of a petition in bankruptcy by his wife cannot, I think, affect his right as at the time he filed his petition. Hence the sole question for decision now is whether or not he is entitled as one of the spouses in an estate by the entirety to claim an exemption in such estate under the Oregon Statute.

My view of the matter is that he cannot do this. The statute is explicit that it must be the owner who may make the claim to the homestead and Breneman, it seems to me, was not the owner either of the whole or of any part of the property. It belonged to the community, the union or the entirety. He was [19] no more entitled to claim a homestead than was his wife or the entirety, or union. There was no part of this estate which might be set off to him because there was no part which

could be designated as belonging to him. I agree with what the court said in the case of *Sharp vs. Baker*, 99 NE. 44:

“A tenant by entirety has no separate interest or property in the entirety estate which can be claimed as exempt. The right of an execution defendant to claim property as exempt extends only to property in which he has an individual interest. \* \* \* The fact that neither of the tenants by entireties can claim as exempt the entirety property or any part thereof as against a joint execution levied thereon seems to be a hardship; but the apparent hardship in such a case is not greater than that which results from the inability of a partner to claim as exempt his interest in partnership property. It is the business of the courts to declare the law as it is and not to make law to relieve against hardships. If the law as it now is works an injustice, the remedy must be sought in the legislature and not in the courts.”

And in *Henderson vs. Hoy*, 26 La. 156:

“The property or right seized is the plaintiff’s share in the land which belongs to the six heirs of J. H. Henderson. There is no particular part of the five hundred acres that he can rightfully claim as his own. He only has a share of one-sixth in each and every acre. He may never become the sole owner of any part of it because it may happen that a partition by litigation may be deemed most

advantageous to the owners, and the partition be made in that way. But a sufficient answer to plaintiff's pretensions on this point is, that the property seized is not susceptible of being a homestead; it is only his share of the land; it is an incorporeal. And an incorporeal cannot be the object of the operation of the homestead act."

See also

Wolfe vs. Fleischacker, 63 Am. Dec. 121,  
Avans vs. Everett, 5 Lea (Tenn.), 76,  
United States Oil & Land Co., vs. Bell, 153  
Cal., 781, 96 Pac. 901.

It is therefore ordered that the petition of the Trustee to sell free from liens be, and the same is hereby allowed, and the petition of the bankrupt, H. J. Breneman, to have his homestead set aside as exempt be, and the same is hereby, denied.

Dated at Portland, Oregon, January 22d, 1924.

A. M. CANNON,  
Referee in Bankruptcy.

Filed February 27, 1924. G. H. Marsh, Clerk.  
[20]

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AND AFTERWARDS, to wit, on the 8th day of February, 1924, there was duly Filed with the Referee in Bankruptcy a petition to review the order of Referee, in words and figures as follows, to wit: [21]

In the District Court of the United States for the  
District of Oregon.

No. 5930.

In the Matter of H. J. BRENEMAN, Bankrupt.

PETITION BY BANKRUPT TO REVIEW  
ORDER OF THE REFEREE DENYING  
THE BANKRUPT A HOMESTEAD AND  
ORDERING THE TRUSTEE TO SELL THE  
PROPERTY FREE OF LIENS.

The petition of H. J. Breneman, bankrupt, respectfully represents that on the 24th day of January, 1924, manifest error to the prejudice of the petitioner was made by the Referee in said matter and in the refusing to set aside a homestead in the following described property:

Commencing at a point 22.785 chains West of the Southeast corner of the S. F. Staggs and Minerva J. Staggs D. L. C. Not. No. 1211, Claim No. 55 in T. 4 S. R. 4 W. of the W. M. and running thence West 7.51 chains; thence North  $13\frac{1}{3}$  chains; thence East 7.51 chains; thence South  $13\frac{1}{3}$  to the place of beginning, and containing 10 acres.

ALSO, The West half of the "South Park subdivision, "the same being a subdivision in the above named and numbered D. L. C. of S. F. Staggs and wife, containing  $12\frac{1}{2}$  acres of land, as the same appears upon the duly recorded plat of said subdivision now of record

in the office of the Recorder of conveyances in and for said county and State.

And the Referee further erred in Ordering the Trustee to sell the property above described free from liens.

The errors complained of are:

First. The record in this cause, which was before the Referee, shows that H. J. Breneman was adjudged a bankrupt on the 21st day of February, 1921, and claimed a homestead in the following described property:

Commencing at a point 22.785 chains west of the Southeast corner of the S. F. Staggs and Minerva J. Staggs Donation Land Claim Notification No. 1211, Claim No. 55, in T. 4 S. R. 4 West of the Willamette Meridian, and running thence West 7.51 chains; thence North  $13\frac{1}{3}$  chains; thence East 7.51 chains; thence South  $13\frac{1}{3}$  chains to the place of beginning, containing 10 acres.

Also the West half of the "South Park Subdivision," the same being a Subdivision in the above named and numbered D. L. C. of S. F. Staggs and wife, containing  $12\frac{1}{2}$  acres of land, as the same appears upon the duly recorded plat of said Subdivision now of record in the office of the Recorder of Conveyances in and for said County and State. [22]

As shown by Schedule B on page 1, as exempt under the laws of the State of Oregon.

Second. The evidence shows that the bankrupt, H. J. Breneman, has maintained his home on said

property prior to and at all times since filing his petition in bankruptcy.

Third. The Trustee in bankruptcy never set apart which property he claimed as exempt as shown by the records in this cause.

Fourth. The Referee erred in holding that the Trustee was entitled to sell, free from liens, a piece of property held by the entirety, while the other spouse was living. The Referee erred in his conclusions of Law from the evidence, and the record at said hearing.

WHEREFORE, your petitioner prays that the order of the Referee be reviewed by the Honorable Judge in this case, and your petitioner will ever pray.

H. J. BRENEMAN,  
Petitioner.

W. L. COOPER,  
Attorney for the Petitioner.

United States of America,  
District of Oregon,—ss.

I, H. J. Breneman, petitioner described in the foregoing petition, do hereby make solemn oath that the statements therein are true and correct to the best of my knowledge, information and belief.

H. J. BRENEMAN,  
Petitioner.

Subscribed and sworn to before me this 8th day of February, 1924.

M. J. SPURLIN,  
Notary Public for Oregon.

My commission expires April 27, 1924.



Filed February 8, 1924. A. M. Cannon, Referee in Bankruptcy.

Filed February 27, 1924. G. H. Marsh, Clerk.  
[23]

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AND AFTERWARDS, to wit, on the 14th day of February, 1924, there was duly filed with the Referee in Bankruptcy testimony, in words and figures as follows, to wit: [24]

In the District Court of the United States for the District of Oregon.

IN BANKRUPTCY.

In the Matter of H. J. BRENEMAN, a Bankrupt, #B6404, and EDITH BRENEMAN, a Bankrupt, #B6930.

TESTIMONY.

This matter came on regularly to be heard on the 20th day of November, 1923, at ten o'clock A. M. before the Honorable Anderson M. Cannon, Referee in Bankruptcy, and by agreement was adjourned to the 27th day of November, at two o'clock P. M. at which time the following proceedings were had, to wit:

The Trustee, Mr. M. F. Corrigan, was present in person and represented by his attorneys Messrs. William B. Layton and N. Ray Alber.

Mr. S. J. Bischoff was present representing Mr. D. M. Neighbor, a creditor.

The bankrupts were present in person and represented by their attorney Mr. W. L. Cooper.

The REFEREE.—These are the cases of H. J. and Edith Breneman. Mr. Cooper do you represent them both?

Mr. COOPER.—I do, but I desire first to take some testimony in the Edith Breneman case.

Mr. LAYTON.—Mr. Allison claims the right to appear.

The REFEREE.—He is not here and is not represented. [25] He was served. If he wanted to be present he should have been here.

Mr. LAYTON.—I think the Court is right in declaring him in default.

The REFEREE.—You want to take testimony in the Edith Breneman case first?

Mr. COOPER.—If you please.

The REFEREE.—You may proceed.

\* \* \* \* \*

#### TESTIMONY OF H. J. BRENEMAN.

Mr. H. J. BRENEMAN, in the H. J. Breneman case.

Direct Examination By Mr. COOPER.

Q. You are H. J. Breneman the bankrupt?

A. Yes, I am.

Mr. COOPER.—The Trustee in his petition or answer to my petition has set up a lot of stuff and that is the reason I want to take a little testimony in answer to his claims.

Q. Mr. Breneman in your petition for your homestead exemption that you filed here covering the

(Testimony of H. J. Breneman.)

property you had listed, as claimed in your schedule, being Schedule B, I will ask if you are living or were living on this [26] property at the time you filed your petition in bankruptcy? A. Yes, sir.

Q. We will omit any description of it now, the property being the property described in your petition? A. Yes.

Q. Have you kept that as your home and occupied it as your home since then? A. Yes.

Q. Is it your home now? A. Yes.

Q. Are you away from home at any time, if so, where?

A. Yes, I am working at the State Hospital.

Q. What have you got belonging to yourself and wife in the house on this property that you have claimed as your homestead?

A. We have our household goods, eight and a half tons of baled hay, and some other articles that we have there.

Q. You also claim some personal property as exempt; personal property on the homestead?

A. Yes, part of it is on the homestead.

Q. Where is the rest of it?

A. One of the horses died and I sold the other one.

Q. When did you sell the other one?

A. This last March.

Q. What property have you got in the house?

A. We had our carpets, bedding, stoves, cooking utensils, and everything we have been using. Our piano.

(Testimony of H. J. Breneman.)

Q. Have you moved out any of that stuff since you filed your petition in bankruptcy?

A. Moved out nothing but a few of our best clothes that we wear away. We use the stuff there when we come home. [28]

Q. How often do you come back to your home?

A. Once a week.

Q. You have not worked continuously at the Oregon State Hospital since you filed your petition in bankruptcy, have you? A. No, sir.

Q. I believe the Trustee states that you permitted one D. M. Nayberger to sell the property. I will ask you to tell the Court what was done in that connection?

Mr. LAYTON.—The records are the best evidence of that.

The REFEREE.—Yes, they are.

Mr. COOPER.—I think you are correct about that. One part of the law permits or says if execution is issued and property is attached that the man claiming a homestead, or his wife, or some member of his family, can notify the officer that makes the levy claiming it as a homestead; now that is the evidence I want to offer.

The REFEREE.—He can say what he did. The notice is the best evidence, of course, but he can say what he did.

Q. Did you give Sheriff Ferguson a notice claiming your exemption? A. Yes.

Q. About when did you serve that notice?

A. It was in July 1922.

(Testimony of H. J. Breneman.)

Q. Well, at the same time you gave the sheriff the notice did you leave with the recorder any instrument? [29]

A. Yes, I left him a copy of the notice to be filed and paid for it.

The REFEREE.—You may use that copy which you have and if it is necessary, have it certified.

Mr. COOPER.—I have a certified copy of the notice the same as I have copied in my petition.

Mr. BISCHOFF.—I want to object to evidence regarding the filing of notice with the sheriff or the recorder on the ground that the notice referred to may not operate as sufficient notice to prevent a sale in the proceedings then pending in that court, and it may not operate as sufficient notice to prevent a sale in the present proceeding. As far as I know no notice has ever been given to the bankruptcy court or to the Trustee in Bankruptcy.

Mr. COOPER.—The petition of the bankrupt claims exemption. The Trustee says I am not entitled to my exemption for the reason that I have permitted another party to sell the property.

Mr. BISCHOFF.—I object as far as the State Court is concerned.

The REFEREE.—There seems to be a claim in the schedule filed September 23, 1921.

Mr. BISCHOFF.—I am not questioning that. I am objecting to it so far as the State Court is concerned.

Mr. COOPER.—This is not in the State Court. It is not for that court. It is for this court. Here

(Testimony of H. J. Breneman.)

is my certified copy showing I filed with the recorder notice of my exemption and I filed it on [30] July 28, 1922, and according to our petition the sale was not made until August.

Mr. BISCHOFF.—I object to this notice going into evidence on the ground that it would not affect the Trustee, the claim of exemption would not affect the Trustee, as against the Trustee.

The REFEREE.—Let it go in.

The paper referred to was offered and received as above and marked Bankrupt's Exhibit "C."

Mr. COOPER.—That is all.

Cross-examination by Mr. LAYTON.

Q. How long have you been employed at the State Hospital?

A. I went down there first a year ago last April, I think on the 6th of April, and I worked there until the 8th day of November. At that time I went to the penitentiary as a guard until the 17th of January.

Q. Where did you live while you were in Salem?

A. I stayed at the State Hospital when I was there. I boarded there.

Q. Was your wife with you? A. Yes.

Q. She was employed there also? A. Yes.

Q. And has been employed there all the time you have been employed there?

A. No, not all the time.

Q. When did she go to work there? [31]

A. She quit there last fall. I believe it was August she quit and she went back again in May

(Testimony of H. J. Breneman.)

some time of this year. I don't know the exact date.

Q. You have a family have you not? A. Yes.

Q. Where do your children live?

A. The one boy is working at the State Hospital. The other little boy makes his home at the place, or wherever he can. That is his home.

Q. Where? A. On this little place.

Q. This little place at McMinnville? A. Yes.

Q. What is his name? A. Glen.

Q. Has he not been down to Salem with you?

A. No, sir.

Q. Never been down there?

A. He worked about a month and a half at the farm last spring.

Q. How old is he? A. Eighteen.

Q. Oh. You took the harvest off this place in 1821 did you not? A. Yes.

Q. And used the proceeds thereof for yourself?

A. Yes.

Q. You took the harvest off the place in 1922, did you not? A. Yes.

Q. And used the proceeds for yourself?

A. Yes, for my family. [32]

Q. And you took the harvest off in 1923?

A. Yes.

Q. And used the proceeds? A. Yes.

Q. You have never turned any of that money over to the Trustee in Bankruptcy, have you?

A. No.

Q. You were served with notice from this court

(Testimony of H. J. Breneman.)

to the effect that the Trustee in Bankruptcy should have possession of those proceeds, were you not?

A. Yes.

Q. And at one time you fired the Trustee or the person he put there in charge off that place did you not?

A. The person that I put off was staying there with my boy. He was nothing more than a tramp, and I saw the way he was doing, he was doing my boy no good, and when I came down there and saw the way he was doing I put him off the place.

Q. Threw him off?

A. I told him to get out of there. Nobody put that man on the place. He came there with my boy Glen and he was nothing more than a tramp. That is all he was.

Q. He was put there in charge by the Trustee was he not? A. Not that I know of.

Q. Why don't you answer my question. You put the Trustee off, or the man the Trustee put there in charge?

A. Not that I know of. I don't know who that man was. He was nothing more than a tramp and he was staying there with Glennie, and he had no authority to stay there except from the boy, and I told him to get out of there. He was doing [33] the place and the boy no good by staying there.

Q. Who is in possession of that place now?

A. I am.

Q. Are you living there?

A. I and my boy. I sleep there at nights occasionally. I have it fixed so I can stay there.



(Testimony of H. J. Breneman.)

Q. Anybody else there?     A. No.

Q. Who is there in charge to-day?

A. I don't know. I have nobody there to-day.

Q. Your wife is not there to-day, is she?

A. No.

Q. And none of your family is there?

A. My boy drives a milk wagon and he has no other home. If he leaves his job he knows that is his home.

Q. Do you claim to be in possession of this place in dispute notwithstanding the orders of the United States Court?

A. I do not claim that I have always had possession of it.

Q. You are here to-day asking for exemption on that property?

A. I have asked for exemption because that is my home.

Q. How much money have you taken off that place since the Trustee was appointed by this court?

A. It would be pretty hard for me to say exactly how much I have got out of the place at any time. It never has been much. I have not kept account of it. About a year ago they questioned my right to the crops. I did all the work and paid for keeping the place up. I think I might have had \$250 after all the expenses were paid. Maybe not that much. I have some hay in the barn now. I plowed the ground myself last fall and put it [34] in and had the hay cut and baled. I think there are something like eight tons. No great amount.

(Testimony of H. J. Breneman.)

The REFEREE.—Have you had a crop this year?

A. Yes, there was a very small crop. I think I got something like \$95 for the prunes this year.

Q. You never put any improvements on this place since you filed your petition in bankruptcy?

A. No, except putting in the hay and attending to that, and keeping the house in repair.

Q. You have never spent a dollar on that place, have you?

A. Yes, I have. I spent several dollars this spring and have done quite a lot of work on it myself which is worth a good deal.

Q. As a matter of fact, you have abandoned the place and allowed it to run wild and that is its condition at the present time? A. No, sir.

Q. I guess the place would speak for itself. It has nobody there looking out for it?

A. My oldest son was down there Sunday all day.

Q. Did you take any of your household effects with you to Salem?

A. Don't need them. We have everything furnished there.

Q. The only reason you did not take any of them away was because you did not need them?

A. I wanted the place furnished so we could come home whenever we wanted to. That is our home. The only home we have.

Q. Did you take any of your household goods off that place?

A. Nothing went off that place but the stock

(Testimony of H. J. Breneman.)

except what somebody stole. In the last thirty days somebody broke the lock [35] and stole the clock off the shelf. Where the clock is I could not say.

Q. Now let us get an answer to my question. Did you take any of your personal effects off that place? A. My clothes.

Q. I mean any of your household furniture?

A. We took the sewing machine up to the State Hospital two weeks ago.

Q. What else? A. That is all.

Q. That answer stands now. All you have taken off this place is just this sewing-machine, of your household effects?

A. Of our household furniture. There are four beds, the carpets are on the floors, the stove is there, everything was there ten days ago.

Q. Your wife has taken nothing?

A. She has not taken anything.

Q. The sewing-machine is all you have taken?

A. That is all.

Q. Both you and your wife draw a salary for your services at Salem? A. Yes.

Q. The Circuit Court never gave you an order setting aside that property as exempt, did it?

A. The Judge told me I had my exemption.

Q. The Court down there at McMinnville?

A. If it did, I don't know. There have been so many papers and things that I don't know what they all were.

Q. There was an injunction proceeding to stop

(Testimony of H. J. Breneman.)

them from [36] selling the property on account of your exemption?

A. Newbauer.

Q. Didn't you try to stop Neubauer?

Mr. COOPER.—I object to that. The record is the best evidence. I will tell you about that. He did. I have a copy of the complaint.

Mr. LAYTON.—Put that in the record. That issue was raised entirely on the exemption claim.

Mr. COOPER.—No, it was not.

The REFEREE.—The record is the best evidence on that subject.

Mr. BISCHOFF.—The exemption action came on before Judge Belt and the complaint was dismissed.

The REFEREE.—I don't see what that has to do with this matter anyway.

Mr. LAYTON.—Put the whole record in in that case. Let it go for what it is worth.

Mr. COOPER.—The reason was that the sale had already been made and you could not enjoin a thing that had already been done.

Mr. LAYTON.—That presents an interesting question, if the property had already been sold.

The REFEREE.—I do not think we are concerned with what took place in the State court.

The REFEREE.—I don't think that court had any jurisdiction.

Mr. BISCHOFF.—It had not in the H. J. Breneman case, but as far as the Edith Breneman is concerned that is a different matter. [37]

That claim was more than four months.

Mr. COOPER.—No, it is not. I can show the Court the dates in the matter of the State court.

The REFEREE.—Did you have a lien on this property four months before the petition in bankruptcy was filed?

Mr. BISCHOFF.—Not in the Edith Breneman matter. We levied on both.

The REFEREE.—Is that all?

Mr. COOPER.—That is all.

Mr. LAYTON.—That is all.

Filed February 14, 1924. A. M. Cannon, Referee in Bankruptcy.

Filed February 27, 1924. G. H. Marsh, Clerk.  
[38]

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AND AFTERWARDS, to wit, on the 27th day of February, 1924, there was duly filed in said court the certificate of the referee for review, in words and figures as follows, to wit: [39]

In the District Court of the United States for the District of Oregon.

No. B.-5930.

In the Matter of H. J. BRENEMAN, Bankrupt.

REFEREE'S CERTIFICATE ON REVIEW OF  
ORDER DENYING BANKRUPT'S PETI-  
TION FOR A HOMESTEAD EXEMPTION  
AND ALLOWING PETITION OF TRUS-  
TEE TO SELL FREE FROM LIENS.

To the Honorable the District Court Above Named:  
The undersigned Referee in Bankruptcy hereby

certifies that in the course of proceedings heretofore taken in this matter an order was taken on January 22, 1924, denying the petition of the bankrupt for an order declaring and setting aside to him as exempt a homestead of the real property described in the schedules and in the various petitions and orders of record herein, and at the same time granting the petition of the trustee for an order to sell said property free from liens, and that thereafter the said bankrupt, being aggrieved at the order so made, filed his petition for review, which petition was allowed; and so the question for decision is the legality of the order so made.

The order itself sets forth such facts as may be necessary to an understanding of the situation and the reasons for the making of the order so that the same need not now be repeated in this certificate.

I hand up herewith the following papers.

Petition to sell free from liens.

Bankrupt's answer thereto.

Petition of bankrupt to set aside real property as exempt.

Answer of Trustee thereto.

Copy of order under review.

Petition for review.

All the testimony taken upon the petitions.

Respectfully submitted this 26th day of February, 1924.

A. M. CANNON,  
Referee.

Filed February 27, 1924. G. H. Marsh, Clerk.

AND AFTERWARDS, to wit, on the 2d day of April, 1924, there was duly filed in said court an order of Court affirming the order of the Referee, in words and figures as follows, to wit: [41]

In the District Court of the United States for the District of Oregon.

In the Matter of H. J. BRENEMAN, Bankrupt.

ORDER ON REVIEW OF REFEREE'S ORDER DENYING BANKRUPT'S PETITION FOR A HOMESTEAD EXEMPTION AND ALLOWING PETITION OF TRUSTEE TO SELL FREE FROM LIENS.

This matter coming on for hearing before this court upon the petition for review of said bankrupt of an order entered herein by the Referee before whom this estate is pending, which order denied the petition of said bankrupt for a homestead exemption and allowed the petition of the trustee to sell free from liens, and this Court having duly examined the records and files of this case and considered the same, and finding the order of the referee therein is well considered and proper:

IT IS THEREFORE ORDERED that the order heretofore entered by A. M. Cannon, Esq., Referee, denying the homestead exemption claimed by said H. J. Breneman and approving the petition of the trustee to sell the real property therein described free and clear of liens, be and the same is approved and confirmed in all respects.

Dated this 2d day of April, 1924.

CHAS. E. WOLVERTON,

Judge.

Filed April 2, 1924. G. H. Marsh, Clerk. [42]

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AND AFTERWARDS, to wit, on the 8th day of August, 1924, there was duly filed in said court a praecipe for transcript, in words and figures as follows, to wit: [43]

In the District Court of the United States for the District of Oregon.

In the Matter of H. J. BRENEMAN, Bankrupt.

PRAECIPE FOR TRANSCRIPT.

To the Clerk of the District Court of the United States for the District of Oregon:

Please make transcript of the following papers in the above-entitled matter:

1. The following portion of Schedules B-3 of the Schedules in Bankruptcy:

“STATEMENT OF THE PROPERTY  
CLAIMED AS EXEMPT BY YOUR  
PETITIONER.

\* \* \* \* \*

“Homestead upon which your petitioner has lived and occupied as his home since 1914, of which the following is a description:

“Commencing at a point 2278 chains west of the southeast corner of the S. F. Staggs



and Minerva J. Staggs Donation Land Claim. Notification No. 1211, claim No. 55, in Township 4 South of Range 4 West of the Willamette Meridian, and running thence west 7.51 chains; thence north  $13\frac{1}{3}$  chains; thence east 7.51 chains; thence south  $13\frac{1}{3}$  chains to the place of beginning, containing about 10 acres; also the west half of the South Park subdivision, the same being a subdivision in the above named and numbered Donation Land Claim of S. F. Staggs and wife, containing  $12\frac{1}{2}$  acres of land, as the same appears upon the duly recorded plat of said subdivision now of record in the office of the Recorder of Conveyances in and for said County and State . . . \$2,000.00.”

2. Petition of Bankrupt filed with the Referee June 13, 1923, praying that homestead claimed as exempt be set aside to him.
3. Answer of Trustee to Bankrupt's petition for exemption. [44]
4. Petition of M. F. Corrigan, Trustee, filed with, the Referee on the 19th day of June, 1923, praying for an order to show cause why property should not be sold free and clear of lien.
5. Answer of H. J. Breneman, Bankrupt, to the petition for an order to show cause filed with the Referee on the 12th day of July, 1923.
6. Transcript of testimony upon the hearing in the matter of H. J. Breneman, Bankrupt,

B-6404, and E. Breneman, Bankrupt, B-6930, beginning on p. 7 of the transcript and continuing to the end. (The transcript beginning at the top of p. 2 and continuing to the bottom of p. 7 may be omitted, said testimony having been taken in the matter of Edith Breneman, Bankrupt.)

7. Order of Referee of January 22, 1924.
8. Petition to review order of Referee filed with said Referee on the 8th day of February, 1924.
9. Certificate of Referee upon petition for review filed on the 24th day of February, 1924.
10. Order filed April 2, 1924, confirming order of Referee.
11. Petition of Bankrupt to review dated May 16, 1924.
12. Notice of filing petition of Bankrupt to review dated May 16, 1924.
13. Order of District Court extending time within which to file petition for review, dated May 16, 1924.
14. Praeipce for this transcript.

And file said transcript with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

W. L. COOPER,  
SIDNEY TEISER,  
Attorneys for Bankrupt.

State of Oregon,  
County of Multnomah,—ss.

Service of the within praecipce is hereby accepted

in Multnomah County, Oregon, by receiving a copy thereof duly certified.

W. B. LAYTON,  
Attorney for Trustee.

Filed August 8, 1924. G. H. Marsh, Clerk. [45]

TRANSCRIPT OF RECORD REQUESTED BY THE TRUSTEE, BY HIS PRAECIPE FILED HEREIN, EXCEPT SUCH PARTS OF THE RECORD AS HAVE ALREADY BEEN INCLUDED IN THIS TRANSCRIPT IN ACCORDANCE WITH THE PRAECIPE FILED BY THE BANKRUPT.

AND, to wit, on the 31st day of March, 1922, there was duly filed with the Referee in Bankruptcy of said Court objections of the Trustee to bankrupt's claim to have property set aside as exempt, in words and figures as follows, to wit:  
[46]

In the District Court of the United States for the District of Oregon.

In the Matter of H. J. BRENEMAN, Bankrupt.

OBJECTIONS OF TRUSTEE TO BANKRUPT'S CLAIM TO HAVE REAL PROPERTY SET ASIDE AS EXEMPT.

To the Honorable CHARLES E. WOLVERTON and the Honorable ROBERT S. BEAN, Judges of the District Court of the United States for the District of Oregon:

Your petitioner, M. F. Corrigan, would represent to the Court that he is the duly appointed, qualified

and acting Trustee of the estate of the above-named bankrupt.

That he hereby objects to the claim of the bankrupt to have set aside, as a homestead, the real property described and claimed as exempt in Schedule "B" (3) of the bankrupt's petition of bankruptcy on file in the above-entitled court, for the reason that the said bankrupt has no just claim to a homestead in the said lands and the said lands are not exempt.

M. F. CORRIGAN,  
Trustee.

State of Oregon,  
County of Yamhill,—ss.

I, M. F. Corrigan, being first duly sworn, say, that I am Trustee in the above-entitled matter, and that the facts set forth in the foregoing objection to exempt property are true, as I verily believe.

M. F. CORRIGAN.

Subscribed and sworn to before me this 29th day of March, 1922.

[Notarial Seal] LAMAR TOOZE,  
Notary Public for Oregon.

My commission expires Sept. 25, 1925. [47]

State of Oregon,  
County of Multnomah,—ss.

Due service of the within objections of Trustee, etc., and the receipt of a copy thereof duly prepared and certified by Lamar Tooze, one of the attorneys

for trustee, is hereby admitted in said County and State, this 31st day of March, 1922.

W. L. COOPER,  
Attorney for \_\_\_\_\_.

Filed March 31, 1922. A. M. Cannon, Referee in Bankruptcy.

Filed August 26, 1924. G. H. Marsh, Clerk.  
[48]

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AND AFTERWARDS, to wit, on the 28th day of June, 1922, there was duly filed in said court a petition in bankruptcy by Edith Breneman, with Schedules A and B annexed thereto. So much of Schedule B as is requested by the praecipe of the Trustee, in words and figures as follows, to wit: [49]

In the District Court of the United States for the District of Oregon.

No. B.-6404.

In the Matter of EDITH BRENEMAN, Bankrupt.  
PETITION IN BANKRUPTCY OF EDITH  
BRENEMAN.

SCHEDULE B.—STATEMENT OF ALL PROP-  
ERTY OF BANKRUPT.

Schedule B-1. REAL ESTATE.

None.

EDITH BRENEMAN,  
Bankrupt.

## Schedule B-5.

A particular statement of the property claimed as exempted from the operation of the Acts of Congress relating to bankruptcy, giving each item of property, and its valuation, and if any portion of it is real estate, its location, description and present use.

Property claimed to be exempted by  
 State laws; its valuation; whether  
 real or personal; its description       NONE.  
 and present use; and reference  
 given to the statute of the State  
 creating the exemption.

EDITH BRENEMAN,  
 Bankrupt.

Petition for Adjudication and Schedules. Filed  
 June 28, 1922. G. H. Marsh, Clerk. [50]

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AND AFTERWARDS, to wit, on the 7th day of  
 October, 1922, there was duly filed with the  
 Referee in Bankruptcy in the case of H. J.  
 Breneman, bankrupt, a petition of the trustee  
 for possession of real estate, in words and  
 figures as follows, to wit: [51]

In the District Court of the United States for the  
 District of Oregon.

In the Matter of H. J. BRENEMAN, Bankrupt.

TRUSTEE'S PETITION FOR POSSESSION  
 OF REAL ESTATE.

Comes now M. F. Corrigan, the duly elected,

qualified and acting trustee in this estate, and respectfully represents and petitions the Court as follows:

That at the time of the filing of the petition herein the bankrupt and his wife claimed to be the owners of and as tenants by the entirety of the following described real property:

The south one-half of the following premises:

Beginning at an iron pipe set for the quarter section corner of the south line of section No. 13, in T. 5 S. R. 4 west of the Willamette Meridian in said Yamhill County, Oregon; thence running north 89 degrees 24' east 33.49 chains to an iron pipe set in the center of county road now there; thence north 52' east along center of said road 16.93 chains to an iron pipe set at an angle in said road; thence running north 15 Deg. 33' east along center of said road 9.393 chains to an iron rod; thence running west 50.583 chains to an iron pipe on west line of lot No. 11 of Walnut Hill Plat No. 2; thence south along west line of said lot 11 above named 13.60 chains to southwest corner of said lot No. 11; thence east 5.80 chains to southeast corner of said lot No. 11 above named; thence south 12.93 chains to the southeast corner of said Walnut Hill Plat No. 2 above named on section line; thence east 8.52 chains to place of beginning and containing 120 acres more or less.

Thereafter, and on or about the 28th day of June, 1922, Edith Breneman, wife of the bankrupt,

filed her certain petition in this court to be adjudged a bankrupt, and on said day was duly and regularly adjudged a bankrupt.

That your petitioner has been and now is the duly elected, qualified and acting Trustee of the estate of Edith Breneman, the wife of the bankrupt herein.

That the bankrupt and his wife are in possession of the real property hereinbefore described and have failed, neglected and refused to give possession thereof to your Trustee.

That your Trustee is informed and believes, and therefore alleges the fact to be, that the value of said real estate is not less than \$7,000.00 nor more than \$12,000, and your Trustee is informed and believes, and therefore alleges the fact to be [52] that said bankrupt and his wife are offering said real estate for sale for the sum of \$12,000.00; that your petitioner as Trustee of this estate and as Trustee of the estate of Edith Breneman, advises that he is entitled to the possession of said real estate and that all the right, title and interest of either of said bankrupts in and to said property by virtue of said bankruptcy proceedings had passed to your Trustee.

WHEREFORE, your Trustee prays for an order of this Court requiring said bankrupt to show cause why an order should not be entered herein directing the possession of said property to be forthwith turned over to your Trustee, and for



such other and further orders as may be necessary and proper.

M. F. CORRIGAN,  
Trustee.

United States of America,  
State of Oregon,  
County of Multnomah,—ss.

I, M. F. Corrigan, being first duly sworn, depose and say that I am Trustee of the within entitled estate; that I have read and signed the foregoing petition and that the same is true as I verily believe.

M. F. CORRIGAN.

Subscribed and sworn to before me this 6th day of October, 1922.

[Seal]

N. RAY ALBER,  
Notary Public for Oregon.

My commission expires Aug. 7, 1925.

Filed October 7, 1922. A. M. Cannon, Referee in Bankruptcy.

Filed January 12, 1923. G. H. Marsh, Clerk.  
[53]

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AND AFTERWARDS, to wit, on the 7th day of October, 1922, there was duly filed with the Referee in Bankruptcy an order of the said Referee for H. J. Breneman to show cause why the petition of the Trustee should not be granted, in words and figures as follows, to wit:  
[54]

In the District Court of the United States for the  
District of Oregon.

In the Matter of H. J. BRENEMAN, Bankrupt.

ORDER TO SHOW CAUSE WHY PETITION  
OF TRUSTEE SHOULD NOT BE  
GRANTED.

This matter coming on for hearing at this time upon the petition of the Trustee for an order requiring the bankrupt herein to show cause why the possession of certain real estate should not be turned over to the Trustee.

IT IS ORDERED that said bankrupt be and he is hereby required to show cause, if any he has, before this Court on the 23d day of October, 1922, at 11 o'clock A. M. thereof, or as soon thereafter as counsel can be heard, why the prayer of said petition should not be granted; and

IT IS FURTHER ORDERED, that a copy of said petition, together with a copy of this order be served on the bankrupt in person forthwith.

A. M. CANNON,  
Referee.

Dated this 7th day of October, 1922.

Filed October 7, 1922. A. M. Cannon, Referee  
in Bankruptcy.

Filed August 26, 1924. G. H. Marsh, Clerk.  
[55]

AND AFTERWARDS, to wit, on the 2d day of December, 1922, there was duly filed with the Referee in Bankruptcy an order of the said Referee directing the bankrupt to deliver possession of real estate to the trustee, in words and figures as follows, to wit: [56]

In the District Court of the United States for the District of Oregon.

Nos. 5930 and 6404.

In the Matter of H. J. BRENEMAN and EDITH BRENEMAN, Bankrupts.

ORDER ON TRUSTEE'S PETITION FOR POSSESSION OF REAL ESTATE.

These are the cases of husband and wife. The H. J. Breneman case is No. 5930 and he was adjudicated bankrupt on September 21, 1921. Edith Breneman's case is No. 6404, and she was adjudicated on June 28, 1922. At the dates of their adjudications they were owners by an estate in entirety covering a tract of land of about twenty-two and one-half acres situate in the outskirts of McMinnville, Oregon, and described in the schedules and in the petitions now before the Court by metes and bounds. This property has a value estimated all the way from seven to twelve thousand dollars. Identical petitions have been filed by the Trustee in both cases in which he sets up that he is entitled to possession of this real estate, having acquired by the adjudication all the right, title and interest

of either or both of the bankrupts in and to the same. This petition is resisted by the bankrupts upon the theory that, it being an estate by the entirety, the Trustee is not interested in the same, cannot sell or dispose of it, and is not entitled to the possession thereof.

It has been held by the Supreme Court of Oregon in the case of *Howell vs. Folsom*, 38 Or. 184, that a married woman may mortgage her present interest in an estate by the entirety and that the mortgagee is entitled to foreclose and sell such interest under a decree of Court and that the purchaser takes the fee of the alienating spouse. And it seems quite generally to be held that the interest of either husband or wife as tenants by the entirety may be levied upon and sold to satisfy judgments or claims against either of them, and that the judgment creditor in such case acquires the estate subject to the contingency that the remaining spouse may claim the entire fee if said spouse survives the other. See: [57]

*Hiles vs. Fisher*, 144 N. Y. 306.

*Buttlar vs. Rosenblatt*, 42 N. J. Eq. 651.

*Ames vs. Norman*, 4 Sneed, 684.

The Bankruptcy Act, Sec. 70, legislates as follows:

“The Trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his appointment or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt, as of the date he was adjudi-

cated a bankrupt, \* \* \* to all \* \* \* (5) property which, prior to the filing of the petition, he could by any means have transferred or which might have been levied upon or sold under judicial process against him.”

The Supreme Court of Oregon has never said to this date, so far as I can find, that an estate by the entirety may be levied upon and sold against either spouse, but that does not seem to be important in the present case because that Court has said that either spouse may transfer his interest by mortgage and, by a parity of reasoning, by deed of conveyance. Hence this property is such that either spouse might, prior to the filing of the petition herein, by mortgage or deed have transferred his or her fee therein, and to such property the Trustee takes title as of the date of the adjudication. So it would appear the Trustee has the entire fee in the property, and the only question seems to be what, in the state of the record, is his present interest in it and what can he do with it?

It goes without saying that the two bankrupts, husband and wife, could by their joint deed have conveyed this property and thus have destroyed the right of survivorship of each and the grantee in such deed, would thereby take the entire estate free of any such claim, on the part of either, after the death of one. I can see no difference in what has taken place in this instance. By force of the bankruptcy statute each has transferred the fee to a Trustee by voluntary act in signing the petition in bankruptcy, which is in effect a conveyance by a bankrupt. Therefore it must follow thereby they

have destroyed the right of survivorship of each and their Trustees hold the property as tenants in common. It certainly seems logical to me to say that when both tenants in entirety part with the fee by voluntary transfer they thereby destroy the right of survivorship. If this is correct of course the Trustee in this instance is the owner of this property, is entitled to [58] possession, and takes subject to no claim of either bankrupt.

The question seems to be more or less novel and one of first impression; at least I have found no authority that bears directly upon the situation presented by this record nor has one been cited. Reasoning from analogy, the above is the only conclusion I can be satisfied with.

I therefore adjudge that the Trustee is entitled to the possession of the property, and the bankrupts are hereby directed to surrender possession to him upon his further demand therefor.

Dated at Portland, Oregon, December 2, 1922.

A. M. CANNON,  
Referee in Bankruptcy.

Filed December 2, 1922. A. M. Cannon, Referee in Bankruptcy.

Filed January 12, 1923. G. H. Marsh, Clerk.  
[59]

AND AFTERWARDS, to wit, on the 11th day of December, 1922, there was duly filed with the Referee in Bankruptcy a petition of the bankrupt for review of the order of the referee, directing bankrupt to deliver real estate to the trustee, in words and figures as follows, to wit:  
[60]

In the District Court of the United States for the District of Oregon.

No. 5930.

In the Matter of H. J. BRENEMAN, Bankrupt.

PETITION BY BANKRUPT TO REVIEW AN  
ORDER OF THE REFEREE ORDERING  
PROPERTY TURNED OVER TO THE  
TRUSTEE.

The petition of H. J. Breneman, bankrupt, respectfully represents that on the 2d day of December, 1922, manifest error to the prejudice of the complainant was made by the referee in said matter and in the findings and order directing that your Petitioner turn over to the Trustee the following described property, situate in Yamhill County, Oregon:

Commencing at a point 22.785 chains West of the Southeast corner of the S. F. Staggs and Minerva J. Staggs D. L. C. Not. No. 1211, Claim No. 55 in T. 4 S. R. 4 W. of the Will. Mer., and running thence West 7.51 chains; thence North  $13\frac{1}{3}$  chains; thence East 7.51

chains; thence South  $13\frac{1}{3}$  to the place of beginning, and containing 10 acres.

ALSO: The West half of the "South Park Subdivision," the same being a subdivision in the above named and numbered D. L. C. of S. F. Staggs and wife, containing  $12\frac{1}{2}$  acres of land, as the same appears upon the duly recorded plat of said subdivision now of record in the office of the Recorder of conveyances in and for said county and State.

The errors complained of are:

First. The record in this case, which was before the Referee, shows that H. J. Breneman was adjudged a bankrupt on the 21st day of September, 1921, and listed as liabilities the sum of \$4059.00, and as assets, among other things, the following real property:

Commencing at a point 2278 chains west of the Southeast corner of the S. F. Staggs and Minerva J. Staggs Donation Land Claim, Notification No. 1211 claim No. 55, in Township 4 South of Range 4 West of the Willamette Meridian, and running thence West 7.51 chains; thence North  $13\frac{1}{3}$  chains; thence east 7.51 chains; thence south  $13\frac{1}{3}$  chains to the place of beginning, containing about 10 acres; also the west half of the South Park Subdivision, the same being a subdivision in the above named and numbered Donation Land Claim of S. F. Staggs and wife, containing  $12\frac{1}{2}$  acres of land as the same appears upon the duly recorded plat of said subdivision now



of record in the office of the recorder of conveyances in and for the said County and state, [61] as shown in Schedule B, page 1.

Second. The evidence or record shows that your petitioner claims the real estate listed in Schedule B, page 1 as exempt under the laws of the State of Oregon, as his homestead.

Third. The Trustee in Bankruptcy never set apart the property claimed as exempt as shown by the record in this case.

Fourth. That on the 31st day of March, 1922, the Referee in Bankruptcy made an order in this case stating that the property described in Schedule B was an asset of the estate.

Fifth. That the Referee erred in his opinion in holding that by reason of your petitioner being adjudged a bankrupt on September 21, 1921, that the said property as described in Schedule B was conveyed to the trustee as tenant in common with your petitioner's wife. The Referee erred in finding that the trustee of the estate of your petitioner can hold the property under Bankrupt Act, Sec. 70.

Sixth. The referee erred in finding that by reason of filing the petition in bankruptcy by one spouse the estate by entirety is changed to an estate in common.

Seventh. The Referee erred in finding that the title to real property held by a deed known as a deed by the entirety passes to the trustee as of the date of adjudication.

Eighth. The Referee erred in his Conclusions of Law from the evidence and the record offered at said hearing.

WHEREFORE, your petitioner prays that the order of said Referee may be reviewed by your Honorable Judge in this Court.

Your petitioner ever prays.

W. L. COOPER,  
Attorney for Petitioner.

H. J. BRENEMAN,  
Petitioner. [62]

United States of America,  
District of Oregon,—ss.

I, H. J. Breneman, petitioner mentioned and described in the foregoing petition, do hereby make solemn oath that the statements therein are true and correct to the best of my knowledge, information and belief.

H. J. BRENEMAN.

Subscribed and sworn to before me this 11 day of December, A. D. 1922.

[Notarial Seal]

M. J. SPURLIN,  
Notary Public for Oregon.

My commission expires April 27, 1924.

Received December 11, 1922. A. M. Cannon,  
Referee.

Filed January 12, 1923. G. H. Marsh, Clerk.  
[63]

AND AFTERWARDS, to wit, on the 12th day of January, 1923, there was duly filed in the said court, a certificate of the Referee in Bankruptcy for review of the order directing bankrupt to deliver possession of real estate to the trustee, in words and figures as follows, to wit:  
[64]

In the District Court of the United States for the District of Oregon.

In the Matter of H. J. BRENEMAN and EDITH BRENEMAN, Bankrupts.

REFEREE'S CERTIFICATE ON REVIEW OF ORDER DIRECTING THE SURRENDER OF CERTAIN PROPERTY.

The undersigned Referee in Bankruptcy before whom the above-mentioned cause is pending for administration hereby certifies that on the 2d day of December, 1922, an order was made in each of said causes, that of H. J. Breneman being cause No. 5930, and that of Edith Breneman being cause No. 6404, ordering and directing each of said bankrupts to deliver to the Trustee possession of a tract of real property situate in Yamhill County, Oregon, and particularly described in the petition of the Trustee praying for the order complained of; that after the making of said order, which is identical in each case, the bankrupts being aggrieved thereat, filed their petitions for review which were allowed, and the question for decision is whether the order was correct in the premises.

The facts and law relating to the same are set forth in the order complained of sufficiently to present the precise question before the Court, and need not in this certificate be repeated.

I hand up as a part of this certificate:

1. Petition of Trustee for possession in the H. J. Breneman case with which the petition in the Edith Breneman case is identical.
2. The orders to show cause.
3. The order complained of.
4. The petitions for review.

Respectfully submitted this 11th day of January, 1923.

A. M. CANNON,  
Referee in Bankruptcy.

Filed January 12, 1923. G. H. Marsh, Clerk.  
[65]

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AND AFTERWARDS, to wit on the 7th day of May, 1923, there was duly filed in said court, an order by R. S. Bean, District Judge, affirming the order of the Referee requiring bankrupt to deliver possession of real estate to Trustee, in words and figures as follows, to wit:  
[66]

In the District Court of the United States for the  
District of Oregon.

In the Matter of H. J. BRENEMAN, Bankrupt.

ORDER AFFIRMING AND SUSTAINING DECISION OF REFEREE WITH RESPECT TO TITLE TO CERTAIN REAL ESTATE.

This matter came on for hearing on the petition of the bankrupt to review the order of the Referee, by virtue of which it was adjudged that the Trustee of this estate and Trustee of the estate of Edith Brenneman, the same being No. 6404, pending in this court for administration, had acquired title to and is entitled to possession of the following described real estate:

Beginning at an iron pipe set for the quarter section corner of the south line of section No. 13, in T. 5 S. R. 4 west of the Willamette Meridian in said Yamhill County, Oregon; thence running north 89 degrees 24 minutes east 33.49 chains to an iron pipe set in center of county road now there; thence north 52' along center of said road 16.93 chains to an iron pipe set at an angle in said road; thence running north 15 degrees 33 minutes east along center of said road 9.393 chains to an iron rod; thence running west 50.583 chains to an iron pipe on west line of lot No. 11 of Walnut Hill Pat. No. 2; thence south along west line of said lot 11; thence east 5.80 chains to southeast corner of said lot No. 11 above named; thence south 12.93 chains to the southeast corner of said Walnut Hill plat No. 2 above named on section line; thence east 8.52 chains to place of beginning, and containing 120 acres more or less.

And the Court having taken the matter under advisement, finds no errors as alleged, or otherwise, in the making and entering of said order by the Referee herein;

IT IS THEREFORE ORDERED that the order of the Referee, dated the second day of September, 1922, be and the same is hereby affirmed.

AND IT IS FURTHER ORDERED that the said petition of the bankrupt for revision be and the same is hereby dismissed;

AND IT IS FINALLY ORDERED that the title to the following described real estate be and the same is hereby adjudged to be in M. F. Corrigan, the Trustee of this estate and M. F. Corrigan, and Trustee of the estate of Edith Brenneman, a bankrupt, whose estate is now pending in this court for administration: [67]

Beginning at an iron pipe set for the quarter section corner of the south line of section No. 13 in T. 5 S. R. 4 west of the Willamette Meridian in said Yamhill County, Oregon; thence running north 89 degrees 24 minutes east 33.49 chains to an iron pipe set in the center of county road now there; thence north 52' along center of said road 16.93 chains to an iron pipe set at an angle in said road; thence running north 15 degrees 33 minutes east along center of said road 9.393 chains to an iron rod; thence running west 50.583 chains to an iron pipe on west line of lot No. 11 of Walnut Hill Pat. No. 2; thence south along west line of said lot 11; thence east 5.80 chains to the southeast corner of said lot No. 11 above named; thence south

12.93 chains to the southeast corner of said Walnut Hill plat No. 2 above named on section line; thence east 8.52 chains to place of beginning and containing 120 acres more or less.

And that said Corrigan be and he is hereby entitled to immediate possession thereof, subject only to such homestead exemption rights as either of said bankrupts may have in or to said property.

R. S. BEAN,  
Judge.

Dated this 30th day of April, 1923.

Filed May 7, 1923. G. H. Marsh, Clerk. [68]

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AND AFTERWARDS, to wit on the 13th day of July, 1923, there was duly filed with the Referee in Bankruptcy an answer of D. M. Nayberger to the petition of the Trustee for an order to sell real estate free from liens, in words and figures as follows, to wit. [69]

In the District Court of the United States for the District of Oregon.

In the Matter of H. J. Breneman, Bankrupt.

ANSWER TO PETITION AND ORDER TO SHOW CAUSE WHY CERTAIN REAL ESTATE SHOULD NOT BE SOLD FREE OF LIENS.

Comes now D. M. Nayberger and for his answer to the petition and order to show cause why the

Trustee of the above-entitled estate should not sell certain real property free of liens and alleges:

I.

That on and prior to September 21, 1921, H. J. Breneman the bankrupt above named and Edith Breneman, his wife, were the owners as tenants by the entirety of the certain real property situated in Yamhill County, State of Oregon, and described as follows, to wit:

Commencing at a point 22.785 chains west of the southeast corner of the S. F. Staggs and Minerva J. Staggs D. L. C., Not. No. 1211, Claim No. 55, in T. 4 S. R. 4 W. of the Will. Mer., and running thence west 7.51 chains; thence north  $13\frac{1}{3}$  chains; thence east 7.51 chains; thence south  $13\frac{1}{3}$  chains to the place of beginning, and containing 10 acres.

Also: The west half of the "South Park Subdivision," the same being a subdivision in the above named and numbered D. L. C. of S. F. Staggs and wife, containing  $12\frac{1}{2}$  acres of land, as the same appears upon the duly recorded plat of said subdivision now of record in the office of the Recorder of Conveyances in and for said county and state. [70]

II.

That at all the times herein stated the said Harry J. Breneman and Edith Breneman were and still are husband and wife living together with their children upon the aforesaid real property as a family.



III.

That between September 1, 1919, and July 17, 1921, D. M. Nayberger sold and delivered to the said Harry J. Breneman and Edith Breneman, his wife, in Yamhill County, Oregon, at their special instance and request certain goods, wares and merchandise, to wit: clothing, shoes, thread, buttons, gloves, handkerchiefs, ties, boots, pins, dress goods and dry-goods of various kinds for the use of the aforesaid family, of the reasonable value of \$989.39 no part of which has been paid for except the sum of \$293.40, leaving a balance due thereon for the sum of \$695.99.

IV.

That the aforesaid indebtedness for the expenses of the family were and are chargeable upon the property of the aforesaid Harry J. Breneman and Edith Breneman, his wife, pursuant to the provisions of Sec. 9748, Ore. Laws.

V.

That on September 21, 1921, Harry J. Breneman filed a voluntary petition in bankruptcy in the District Court of the United States for the District of Oregon and was adjudicated a bankrupt on September 22, 1921.

VI.

That on October 19, 1921, D. M. Nayberger, duly commenced an action in the Circuit Court of the State of Oregon, for Yamhill County, against the above-named bankrupt and Edith Breneman, his wife, upon the aforesaid claim for family expenses for the purpose [71] of establishing the charge against the aforesaid real property.

## VII.

That thereafter and on October 19, 1921, a summons was duly issued in the aforesaid action and thereafter on October 19, 1921, a writ of attachment was issued out of and under the seal of the said court in said action to the Sheriff of Yamhill County, State of Oregon, and pursuant to said writ of attachment the Sheriff of Yamhill County, State of Oregon, did duly levy on and attach all of the right, title and interest of the said Harry J. Breneman and Edith Breneman in and to the aforesaid real property.

## VIII.

That thereafter the aforesaid summons and complaint were duly served on the said Harry J. Breneman and Edith Breneman, his wife, and thereafter such proceedings were duly had and taken; that on June 3, 1922, judgment was duly given and entered in the aforesaid action in the Circuit Court of the State of Oregon for Yamhill County, in favor of the said D. M. Nayberger and against the said Harry J. Breneman and Edith Breneman, his wife, for the sum of \$695.99, with interest thereon at the rate of six per cent per annum from and after June 3, 1922, together with the sum of \$21.30 costs and disbursements incurred in said action, and in and by the terms of said judgment it was further adjudged that all of the right, title and interest of the aforesaid Harry J. Breneman and Edith Breneman, his wife, in and to the aforesaid real property be sold and the proceeds applied to the satisfaction of said judgment.

IX.

A true and correct copy of said judgment is attached hereto and marked Exhibit "A" and is referred to as if herein fully [72] and at length set forth.

X.

That thereafter on June 28, 1922, an execution was duly issued out of and under the seal of the Circuit Court of the State of Oregon, Yamhill County, in the aforesaid action directed to the Sheriff of Yamhill County, Oregon, to satisfy the aforesaid judgment and to sell the aforesaid real property.

XI.

That thereafter on June 28, 1922, Edith Breneman filed a voluntary petition in bankruptcy in the District Court of the United States for the District of Oregon, and was adjudicated a bankrupt on that day.

XII.

That pursuant to the aforesaid writ of execution issued in the aforesaid action out of the Circuit Court of the State of Oregon for the County of Yamhill, the Sheriff of Yamhill County, State of Oregon, did on August 18, 1922, duly sell, in the manner provided by law, all of the right, title and interest of the said Harry J. Breneman and Edith Breneman, in and to the aforesaid real property to D. M. Nayberger, for the sum of \$739.15, which is the highest and best sum bid therefor and which was the amount of the judgment, interest and accrued costs at the time of said sale, subject to the statu-

tory right of redemption of the said Harry J. Breneman and Edith Breneman, his wife.

### XIII.

That thereafter an order was duly made and entered in the aforesaid Circuit Court of the State of Oregon, for Yamhill County, in the aforesaid action confirming the said sale on execution.

### XIV.

That by reason of the premises and the facts set forth [73] herein the indebtedness incurred by the bankrupt and Edith Breneman, his wife, more than four months prior to the adjudication of the above-named bankrupt was and continued to be a charge or lien upon the real property owned by the bankrupt, which charge or lien was prior and superior to the right, title and interest acquired by the Trustee in Bankruptcy, and the title of the Trustee in Bankruptcy is therefore subject to the charge or lien in favor of D. M. Nayberger.

### XV.

That by virtue of the aforesaid writ of attachment issued and levied upon the property of Edith Breneman on October 19, 1921, more than four months prior to her adjudication as a bankrupt, created a subsisting lien in favor of D. M. Nayberger, which was prior and superior to the title acquired by the trustee in bankruptcy of the estate of Edith Breneman and the title of said trustee was and is subject to said lien.

D. M. Nayberger therefore objects to the sale of the aforesaid real property free of liens or a sale in any manner whatsoever, and prays that the pe-

tition of the trustee in bankruptcy to sell said property be dismissed.

(Signed) S. J. BISCHOFF. [74]

EXHIBIT "A."

In the Circuit Court of the State of Oregon for  
County of Yamhill.

D. M. NAYBERGER,

Plaintiff,

vs.

HARRY J. BRENEMAN and EDITH BRENE-  
MAN, His Wife,

Defendant.

JUDGMENT.

Now on this 3d day of June, 1922, this cause coming on regularly to be heard, the plaintiff appearing by his attorneys Vinton & Tooze, and applies to the Court for a judgment by default against the above named defendants.

And it appearing to the Court and the Court finds that the said defendants and each of them are in default and that the said default of the said defendants and each of them has been heretofore entered herein in accordance with law.

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED BY THE COURT that the said plaintiff have and recover of and from the defendants and each of them the sum of \$695.99 together with interest on the said sum of \$695.99 from and after the 3rd day of June, 1922, at the

rate of six per cent per annum and for plaintiff's costs and disbursements in this action taxed at —.

And it further appearing to the Court that F. B. Ferguson, Sheriff of Yamhill County, Oregon, did on the 19th day of October, 192—, in pursuance of a Writ of Attachment issued out of the above entitled Court and dated the 19th day of October, 1921, duly and regularly attach and levy upon the following described premises, to wit: [75]

Situate in Yamhill County, and State of Oregon, to wit: Commencing at a point 22.785 chains West of the Southeast corner of the S. F. Staggs and Minerva J. Staggs D. L. C. Not. No. 1211, Claim No. 55 in T. 4 S., R. 4 W., of the Will. Mer., and running thence West 7.51 chains; thence North  $13\frac{1}{3}$  chains; thence East 7.51 chains; thence South  $13\frac{1}{3}$  chains to the place of beginning, and containing 10 acres.

Also: The West half of the "South Park Sub-division," the same being a sub-division in the above named and numbered D. L. C. of S. F. Staggs and wife, containing  $12\frac{1}{2}$  acres of land, as the same appears upon the duly recorded plat of said Sub-division now of record in the office of the Recorder of Conveyances in and for said County and State.

That the said Sheriff, F. B. Ferguson, did on the 19th day of October, 1921, file herein his certificate of Attachment in the above entitled cause wherein he certified that he had attached the above described

real premises under and by virtue of said Writ of Attachment,

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED BY THE COURT that the said Sheriff, F. B. Ferguson, of Yamhill County, Oregon, be and he hereby is ordered, directed and empowered and authorized to sell all of the right, title and interest which the said defendants, Harry J. Breneman and Edith Breneman, his wife, had in the above described real premises on the 19th day of October, 1921, and since said date to satisfy the plaintiff's demands in the manner and form governing the sales of real property on execution and to apply the proceeds of the said sale to the satisfaction of the judgment of the plaintiff, D. M. Nayberger, against the said defendants hereinbefore set forth, and if there be any property or proceeds remaining after satisfying the said execution, the said sheriff is directed, ordered, empowered and authorized, upon demand to deliver the same to the said defendants.

HARRY H. BELT,

Judge of the Above-entitled Court. [76]

State of Oregon,  
County of Multnomah,—ss.

I, S. J. Bischoff, being duly sworn, depose and say that I am one of the attorneys for D. M. Nayberger, one of the respondents in the above-entitled proceeding; that the foregoing answer is true as I verily believe. The reason this verification is made by me is that said D. M. Nayberger is not now

within the County of Multnomah. That the source of my knowledge and the grounds of my belief as to the matters set forth in this answer are the original records and files of the proceedings referred to in the said answer.

S. J. BISCHOFF,

Subscribed and sworn to before me this 12th day of July, 1923.

[Notarial Seal]

N. D. SIMON,

Notary Public for Oregon.

My commission expires 3/8/24.

Due service of the within answer is hereby admitted and accepted, this 12 day of July, 1923, by receiving a duly certified copy thereof.

\_\_\_\_\_,  
Attorney for \_\_\_\_\_.

Filed July 13, 1923. A. M. Cannon, Referee in Bankruptcy.

Filed August 26, 1924. G. H. Marsh, Clerk. [77]

\_\_\_\_\_  
AND AFTERWARDS, to wit, on the 12th day of February, 1924, there was duly filed with the Referee in Bankruptcy, an order of said Referee authorizing trustee to protect interest of bankrupt's estate in real property, in words and figures as follows, to wit: [78]



In the District Court of the United States for the  
District of Oregon.

In the Matter of H. J. BRENEMAN, Bankrupt.

ORDER OF REFEREE AUTHORIZING TRUS-  
TEE TO PROTECT INTEREST OF BANK-  
RUPT'S ESTATE IN REAL PROPERTY.

This matter came on for hearing on the 6th day of February, 1924, upon the request of the Trustee for certain orders with respect to the redeeming or otherwise protecting the interests of this estate from a certain judgment known as the Nayberger judgment, the Trustee being represented by Wm. B. Layton and the Bankrupt being represented by W. L. Cooper, and it being made to appear to the Court that on the 19th day of October, 1921, one D. M. Nayberger started a certain action in the Circuit Court of the State of Oregon for the County of Yamhill, against Harry J. Breneman and Edith Breneman his wife, defendants, for the recovery of a joint account in the sum of \$695.99, together with interest and costs and disbursements incurred, and that by order of the Circuit Court of the State of Oregon for the County of Yamhill, on the 3d day of June, 1922, judgment was entered in said action in favor of the plaintiff and against the defendants for said amount, and which judgment contained the following order:

“And it further appearing to the Court that F. B. Ferguson, Sheriff of Yamhill County, Oregon did on the 19th day of October, 1922,

in pursuance of a Writ of Attachment issued out of the above entitled Court and dated the 19th day of October, 1921, duly and regularly attach and levy upon the following described premises, [79] to wit:

Situate in Yamhill County, and State of Oregon, to wit: Commencing at a point 22.785 chains west of the southeast corner of the S. F. Staggs and Minerva J. Staggs D. L. C. Not. No. 1211, Claim No. 55 in T. 4 S. R. 4 W. of the Will. Mer. and running thence west 7.51 chains; thence north  $13\frac{1}{3}$  chains; thence east 7.51 chains; thence south  $13\frac{1}{3}$  chains to the place of beginning, and containing 10 acres.

ALSO: The west half of the 'South Park Sub-division,' the same being a sub-division in the above named and numbered D. L. C. of S. F. Staggs and wife, containing  $12\frac{1}{2}$  acres of land, as the same appears upon the duly recorded plat of said sub-division now of record in the office of the Recorder of Conveyances in and for said County and State.

That the said Sheriff, F. B. Ferguson, did on the 19th day of October, 1921, file herein his Certificate of Attachment in the above-entitled cause wherein he certified that he had attached the above described real premises under and by virtue of said Writ of Attachment.

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED BY THE COURT that the said Sheriff F. B. Ferguson, of Yamhill County, Oregon, be and he is hereby or-

dered, directed and empowered and authorized to sell all of the right, title and interest which the said defendants, Harry J. Breneman and Edith Breneman, his wife had in the above described real premises on the 19th day of October, 1921, and since said date to satisfy the plaintiff's demands in the manner and form governing the sales of real property on execution and to apply the proceeds of the said sale to the satisfaction of the judgment of the plaintiff, D. M. Nayberger against the said defendants hereinbefore set forth, and if there be any property or proceeds remaining after satisfying the said execution, the said sheriff is directed, ordered, empowered and authorized, upon demand to deliver the same to the said defendants."

And it further appearing that thereafter execution issued on said judgment out of the Circuit Court of the State of Oregon for the County of Yamhill, and that on the 28th day of August, 1922, the sheriff of Yamhill County did sell all of said property to the plaintiff, D. M. Nayberger for the sum of \$739.15, and that thereafter and on the 10th day of February, 1923, the Circuit Court of the State of Oregon for the County of Yamhill did confirm said sale and that said [80] property has not been redeemed from said sale, and that the same may be lost as an asset of this estate unless some steps are taken by the Trustee for the protection of the interest of this estate therein;

IT IS THEREFORE ORDERED that the Trustee be and he is hereby authorized to make an advance to this estate from his own funds of such amount as may be found necessary to protect the interest of this estate in said judgment, either to be used in redeeming said property or otherwise acquiring title thereto;

That in the event that such title to said property is eventually confirmed and settled in this estate or this estate receives the proceeds derived therefrom, after the expenses of this estate are paid there shall be repaid to the Trustee such amount as he may be called upon to advance; otherwise said amount to be determined upon as to its priority and repayment in accordance with the equities of all parties interested, and in accordance with the further order of the Court.

(Signed) A. M. CANNON,  
Referee.

Dated this 12 day of February, 1924. [81]

State of Oregon,  
County of Multnomah,—ss.

Due and legal service of the within order is hereby accepted in Multnomah County, Oregon, this 11 day of February, 1924, by receiving a copy thereof, duly certified to as such by Wm. B. Layton of attorneys for Trustee.

W. L. COOPER,  
Attorney for Bankrupt.

Filed February 12, 1924. A. M. Cannon, Referee  
in Bankruptcy.

Filed August 26, 1924. G. H. Marsh, Clerk.  
[82]

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AND AFTERWARDS, to wit, on the 18th day of March, 1924, there was duly filed with the Referee in Bankruptcy, a report of Trustee, in words and figures as follows, to wit: [83]

In the District Court of the United States for the District of Oregon.

In the Matter of H. J. BRENNEMAN, Bankrupt.

#### TRUSTEE'S REPORT.

Comes now M. F. Corrigan, the duly elected, qualified and acting Trustee in the above-entitled estate and respectfully reports to the Court as follows:

That pursuant to orders heretofore made, and after the bankrupt herein refused to redeem from the Nayberger judgment that certain real estate heretofore described in these proceedings, your Trustee was able to enter into an agreement with Nayberger whereby he acquired from him and his wife deed to said property and after sheriff's deed had issued to Nayberger.

That your Trustee advanced and paid to said Nayberger the sum of \$779.68, and has duly recorded with the County Clerk and Recorder of Yamhill County said deed, and has insured said property against loss by fire.

WHEREFORE your Trustee prays for an order of this Court approving all his acts and doings in

and about the administration of this estate up to this time, and for such other and further orders as may be proper.

Respectfully submitted:

(Signed) M. F. CORRIGAN.

Trustee. [84]

State of Oregon,  
County of Yamhill,—ss.

I, M. F. Corrigan, being first duly sworn, depose and say that I have read and subscribed the foregoing Trustee's report and that the statements therein contained are true as I verily believe.

(Signed) M. F. CORRIGAN,

Subscribed and sworn to before me this 20th day of February, 1924.

[Seal] (Signed) WALTER L. TOOZE, Jr.,  
Notary Public for Oregon.

My commission expires June 10, 1925.

Filed March 18, 1924. A. M. Cannon, Referee  
in Bankruptcy.

Filed August 26, 1924. G. H. Marsh, Clerk.  
[85]

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AND AFTERWARDS, to wit, on the 25th day of August, 1924, there was duly filed in said court, by the Trustee an amended praecipe for transcript, in words and figures as follows, to wit:  
[86]

In the District Court of the United States for the  
District of Oregon.

In the Matter of H. J. BRENEMAN, Bankrupt.

AMENDED PRAECIPE FOR TRANSCRIPT,  
SUBMITTED IN BEHALF OF M. F. COR-  
RIGAN, TRUSTEE OF THIS ESTATE, AND  
RESPONDENT.

To the Clerk of the District Court of the United  
States for the District of Oregon:

In addition to the papers requested by the Bank-  
rupt, kindly make transcript of the following, and  
make corrections as indicated:

I.

September 21, 1921, petition for voluntary ad-  
judication of H. J. Breneman, case No. B-5930,  
Schedule B-3 thereof as follows:

“STATEMENT OF PROPERTY CLAIMED  
AS EXEMPT BY YOUR PETITIONER.

“Homestead upon which your petitioner has  
lived and occupied as his home since 1914, of  
which the following is a description:

“Commencing at a point 2278 chains west  
of the southeast corner of the S. P. Staggs and  
Minerva J. Staggs Donation Land Claim. Noti-  
fication No. 1211, claim No. 55, in Township  
4 South of Range 4 West of the Willamette  
Meridian, and running thence west 7.51 chains;  
thence north  $13\frac{1}{3}$  chains; thence east 7.51  
chains; thence south  $13\frac{1}{3}$  chains to the place  
of beginning, containing about 10 acres; also

the west half of the South Park Sub-division, the same being a subdivision in the above-named and numbered Donation land claim of S. F. Staggs and wife, containing 12½ acres of land, as the same appears upon the duly recorded plat of said subdivision now of record in the office of the Recorder of Conveyances in and for said County and State (Deed to this property is a joint deed to myself and wife, with a life lease to my wife's father, John F. Allison, and for which we have to pay \$265.14 each and every year during the life of my wife's father, John F. Allison. The estimated value of the interest of your petitioner is hard to determine; however, I will say that I would estimate it at about \$2,000.00).

## II.

March 31, 1922, the Trustee filed his objections to the claim of Bankrupt to have set aside as a homestead the real property described in and claimed as exempt in Schedule B-3 of Bankrupt's Petition of Bankruptcy. Respondent requests objections [87] be set forth *verbatim*.

## III.

June 28, 1922, petition for voluntary adjudication in bankruptcy of Edith Breneman, wife of H. J. Breneman, was filed, with accompanying schedules, which are as follows:

Schedule B-1: Real Estate—None.

Schedule B-5: Property claimed exempt, etc.,  
—None.



IV.

October 7, 1922, M. F. Corrigan as Trustee of the estates of H. J. Breneman and Edith Breneman, filed in each estate his petition for possession of real estate, which petition respondent requests be set forth *verbatim*.

V.

October 7, 1922, order to show cause why prayer of petition for possession of real estate should not be granted, which respondent requests be set forth *verbatim*.

VI.

December 2, 1922, order of Referee adjudging Trustee entitled to possession of real estate, which order respondent requests be set forth *verbatim*.

VII.

December 11, 1922, bankrupt's petition for review of order adjudging Trustee entitled to possession of real estate, which respondent requests be set forth *verbatim*.

VIII.

January 11, 1923, Referee's Certificate on review of order adjudging Trustee entitled to possession of real estate, which respondent requests be set forth *verbatim*.

IX.

April 30, 1923, order of the District Court of the United States for the District of Oregon, affirming the order [88] of Referee adjudging Trustee entitled to possession of real estate, which order respondent requests be set forth *verbatim*.

## X.

June 13, 1923, Bankrupt's petition for homestead exemption. (This paper is also requested by Bankrupt.)

## XI.

June 19, 1923, Trustee's petition to sell real estate free of liens. (This paper is also requested by Bankrupt.)

## XII.

July 12, 1923, Answer of Bankrupt to petition to sell free of liens. (This paper is also requested by Bankrupt.)

## XIII.

July 13, 1923, Answer of D. M. Nayberger to Trustee's petition to sell free of liens, which answer respondent requests be set forth *verbatim*.

## XIV.

July 17, 1923, Trustee's answer to Bankrupt's petition for exemption. (This paper is also requested by Bankrupt.)

## XV.

January 22, 1924, Referee's order granting petition to sell free of liens, and denying homestead exemption. (This paper is also requested by Bankrupt.)

## XVI.

Bankrupt's petition for review of order granting Trustee authority to sell free of liens and denying homestead exemption. (Bankrupt also requests this paper.)

XVII.

February 12, 1922, Referee's order authorizing Trustee to make advance to estate from his own funds or such money as may be necessary to protect interests of estate in the Nayberger judgment, either in redeeming said property or otherwise acquiring [89] title thereto, which order respondent requests be set forth *verbatim*.

XVIII.

February 27, 1924, Referee's certificate on review of order granting authority to sell free of liens, and denying homestead exemption. (This paper also requested by Bankrupt.)

XIX.

March 18, 1924, Trustee's report that he has advanced \$779.68 in purchasing property from Nayberger after sheriff's deed had been issued to Nayberger; and upon Bankrupt's refusal to redeem, which report respondent requests be set forth *verbatim*.

XX.

April 2, 1924, order of District Court of the United States for the District of Oregon, affirming Referee's order granting authority to Trustee to sell free of liens, and denying homestead exemption. (Bankrupt also requests this paper.)

Respondent requests that praecipe for this transcript be set forth *verbatim*.

W. B. LAYTON,  
Attorney, for Trustee and Respondent.

State of Oregon,  
County of Multnomah,—ss.

Service of the within amended praecipe for transcript is hereby accepted in Multnomah County, Oregon, this 25 day of August, 1924, by receiving a copy thereof, duly certified to as such by Wm. B. Layton of attorneys for Trustee & Respondent.

SIDNEY TEISER,

Of Counsel for Bankrupt.

By D. DAFFIN.

Filed August 25, 1924. G. H. Marsh, Clerk.  
[90]

### CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

United States of America,  
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 90, inclusive, constitute the transcript of record in the bankruptcy cause in said Court of H. J. Breneman, bankrupt, in accordance with the praecipe for transcript filed by the said bankrupt, and in accordance with the praecipe for transcript filed by the Trustee of the estate of said bankrupt; that the foregoing pages contain a full, true and correct transcript of such portions of the record and proceedings in said cause as the said praecipis

direct shall be included therein, as the same appear at my office and in my custody.

I further certify that the cost of the foregoing record requested by the said bankrupt, is \$10.65, and that the same has been paid by the said bankrupt; that the cost of the foregoing record requested by the said Trustee is \$10.10, and that the same has been paid by the said Trustee.

In Testimony whereof I have hereunto set my hand and affixed the seal of said Court, at Portland, in said District, this 27th day of August, 1924.

[Seal]

G. H. MARSH,

Clerk. [91]

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[Endorsed]: No. 4255. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of H. J. Brennan, Bankrupt. H. J. Brennan, Petitioner, vs. M. F. Corrigan, as Trustee in Bankruptcy of the Estate of H. J. Brennan, Bankrupt, Respondent. Transcript of Record in Support of Petition for Revision. Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, an Order of the United States District Court for the District of Oregon.

Filed August 29, 1924.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

In the District Court of the United States for the  
District of Oregon.

In the Matter of H. J. BRENEMAN, Bankrupt.

ORDER FIXING TIME TO AND INCLUDING  
AUGUST 12, 1924, TO FILE RECORD AND  
STAYING PROCEEDINGS (DATED MAY  
16, 1924).

This cause coming on this day to be heard upon  
the motion of the bankrupt by one of his attorneys,  
Sidney Teiser, for an order fixing the time within  
which to file and docket the record in this cause  
upon petition for review;

And it appearing to the Court, for good cause  
shown, that said time should be fixed as moved,

IT IS ORDERED, that the time within which  
to file the transcript of record in the above-entitled  
case and to docket the same with the Clerk of the  
United States Circuit Court of Appeals for the  
Ninth Circuit, be, and the same is hereby fixed to  
and until the 12th day of August, 1924; and

IT IS FURTHER ORDERED, that pending the  
determination of said cause by the Circuit Court  
of Appeals, that all matters concerning the ques-  
tions appealed from be stayed.

Dated at Portland, Oregon this 16th day of May,  
1924.

(Signed) CHAS E. WOLVERTON,  
Judge.

Filed May 16, 1924. G. H. Marsh, Clerk.

United States of America,  
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing copy of order in bankruptcy in Cause No. B-5930, in the matter of H. J. Brenneman, Bankrupt, has been by me compared with the original thereof, and that it is a correct transcript therefrom, and of the whole of such original, as the same appears of record and on file at my office and in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Portland, in said District, this 16th day of May, 1924.

[Seal] G. H. Marsh, Clerk, By \_\_\_\_\_,  
Deputy Clerk.

[Endorsed]: No. 4255. United States Circuit Court of Appeals for the Ninth Circuit. Filed May 19, 1924. F. D. Monckton, Clerk.

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United States Circuit Court of Appeals for the  
Ninth Circuit.

In the Matter of H J.. BRENNEMAN, Bankrupt.

ORDER FIXING TIME TO AND INCLUDING  
AUGUST 12, 1924, TO FILE RECORD AND  
STAYING PROCEEDING (DATED MAY  
19, 1924).

This cause coming on this day to be heard upon the motion of the bankrupt by one of his attorneys, Sidney Teiser, for an order fixing the time within which to file and docket the record in this cause upon petition for review;

And it appearing to the Court, for good cause shown, that said time should be fixed as moved,

IT IS ORDERED, that the time within which to file the transcript of record in the above-entitled case and to docket the same with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same is hereby fixed to and until the 12th day of August, 1924; and,

IT IS FURTHER ORDERED, that pending the determination of said cause by the Circuit Court of Appeals, that all matters concerning the questions appealed from be stayed.

Dated this 19th day of May, 1924.

WM. B. GILBERT,  
Senior U. S. Circuit Judge.

[Endorsed]: No. 4255. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of H. J. Breneman, Bankrupt. Order Fixing Time to File Record and Staying Proceeding. Filed May 19, 1924. F. D. Monckton, Clerk.



United States Circuit Court of Appeals for the  
Ninth Circuit.

No. 4255.

In the Matter of H. J. BRENEMAN, Bankrupt.  
H. J. BRENEMAN,

Petitioner,

vs.

M. F. CORRIGAN, as Trustee in Bankruptcy of  
the Estate of H. J. Breneman, Bankrupt,  
Respondent.

ORDER EXTENDING TIME TO AND IN-  
CLUDING AUGUST 25, 1924, TO FILE  
RECORD AND DOCKET CAUSE.

Upon telegraphic application of Mr. Sidney Teiser, counsel for petitioner, and good cause therefor appearing, it is ORDERED that the time within which to file the transcript of record in the above entitled cause and to docket the same with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be, and hereby is extended to and including August 25, 1924.

Dated: August 12, 1924.

W. H. HUNT,  
United States Circuit Judge.

[TELEGRAM]

193SF ZP 83

Portland Org 338P AUG 11 1924

Frank D Monckton

Clerk United States Circuit Court of Appeals  
Federal Bldg San Francisco Calif

Re H J Breneman Bankrupt Number Four Two  
Five Five Clerk District Court United States for  
District Oregon has not completed transcript in  
above matter and will not complete same within  
less than week Stop Clerk joins with me in  
request for extension of time until say August  
twenty fifth within which to file transcript on  
appeal Stop Judge Gilbert camping and cannot  
be located Stop Will you consider this telegram  
motion and present same to Judge Hunt Thanks  
Wire collect when order granted

SIDNEY TEISER 409P

[Endorsed]: No. 4255. United States Circuit  
Court of Appeals for the Ninth Circuit. Filed Aug.  
12, 1924. F. D. Monckton, Clerk.

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In the United States Circuit Court of Appeals for  
the Ninth Circuit.

No. 4255.

In the Matter of H J. BRENEMAN, Bankrupt.

ORDER EXTENDING TIME TO AND INCLUDING SEPTEMBER 1, 1924, TO FILE RECORD ON PETITION FOR REVIEW.

This cause coming on this day to be heard upon motion of the Bankrupt by one of his attorneys, Sidney Teiser, for an order extending the time within which to file and docket the record in this cause upon petition for review and it appearing for good cause shown that said time should be extended as moved,

IT IS ORDERED, that the time within which to file the transcript of record in the above-entitled cause and to docket the same with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby extended to and including the first day of September, 1924.

WM. B. GILBERT,  
Judge.

[Endorsed]: No. 4255. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of H. J. Breneman, Bankrupt. Order Extending Time Within Which to File and Docket Record upon Petition for Review. Filed Aug. 23, 1924. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for  
the Ninth Circuit.

No. 4255.

In the Matter of H. J. BRENEMAN, Bankrupt.

STATEMENT OF ERRORS UPON WHICH  
BANKRUPT INTENDS TO RELY.

Comes now H. J. Breneman, Bankrupt and appellant, and states that he intends to rely upon an error of the Court in sustaining the Referee's holding that the Bankrupt was not entitled to a homestead exemption in certain real property in which exemption was claimed, the Referee deciding as a matter of law that a homestead exemption could not be set aside in property held as an estate by the entirety, which decision, and affirmation thereof by the Court, the Bankrupt claims is erroneous.

To determine whether or not such decision and holding, and order based thereon, is erroneous, the Bankrupt and Appellant asserts that only that portion of the record designated by him in his praecipe for transcript are necessary to be considered—that is to say, only that portion of the transcript of record prepared by the Clerk of the District Court and filed with the Clerk of this Court contained on pages 1 to 45, both inclusive.

Dated at Portland, Oregon, this 28th day of August, 1924.

W. L. COOPER,  
SIDNEY TEISER,  
Counsel for Bankrupt.

United States of America,  
State of Oregon,  
County of Multnomah.

Service of the within statement is hereby accepted in Multnomah County, Oregon, by receiving a copy thereof duly certified.

August 28, 1924.

WM. B. LAYTON,  
AG.  
Attorney for Trustee.

[Endorsed]: No. 4255. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of H. J. Breneman, Bankrupt. Statement of Errors upon Which Bankrupt Intends to Rely. Filed Aug. 30, 1924. F. D. Monckton, Clerk.

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In the United States Circuit Court of Appeals for the Ninth Circuit.

In the Matter of H. J. BRENEMAN, Bankrupt.

STATEMENT OF PARTS OF RECORD TRUSTEE AND RESPONDENT CONSIDERS NECESSARY FOR CONSIDERATION HEREOF.

Comes now M. F. Corrigan, respondent, in con-

formance with Rule 23, paragraph 8 of the Rules of the Circuit Court of Appeals for the Ninth Circuit, and states:

That the record designated by him in his praecipe for transcript is necessary for a complete determination of this case.

That the Bankrupt in his schedules claimed certain real estate as exempt, and also claimed it constituted an estate by the entirety, and thereafter contended that because he was one of the tenants in the entirety that the Bankruptcy Court has no right to possession or to administer said property;

That some time after the Referee ruled, and his ruling was affirmed by the District Court of the United States for the District of Oregon, that the Trustee was entitled to possession of said property, the bankrupt asserted his right for exemption;

That after the voluntary petition in Bankruptcy was filed, a creditor of the Bankrupt and his wife, on a claim for which they were jointly liable, started an action in the Circuit Court of the State of Oregon for Yamhill County and obtained judgment for the amount of his claim and the property constituting the estate by the entirety was ordered sold;

That thereafter the property was sold and bid in by the judgment creditor;

That the Bankrupt or his wife, or both of them, did not in said action claim any exemption and refused and neglected to redeem said property from said judgment;

That said property was sold after the Referee ruled that the Bankrupt was not entitled to exemptions, all of which matters are made to more specifically appear in that portion of the record requested by the Trustee and do not appear in that portion of the record requested by the Bankrupt, and the Trustee and respondent therefore requests that there be printed and included in the record all of the papers requested by him.

Dated at Portland, Oregon, this 2d day of September, 1924.

WM. B. LAYTON,  
Attorney for Trustee and Respondent.

State of Oregon,  
County of Multnomah,—ss.

Service of the within statement is hereby accepted in Multnomah County, Oregon, this 2d day of September, 1924, by receiving a copy thereof, duly certified to as such by Wm. B. Layton of attorneys for Trustee and Respondent.

SIDNEY TEISER,  
Attorney for Bankrupt.

[Endorsed]: No. 4255. In the United States Circuit Court of Appeals, for the Ninth Circuit. In the Matter of H. J. Breneman, Bankrupt. Statement of Parts of Record Trustee and Respondent Considers Necessary for Consideration Hereof. Filed Sep. 4, 1924. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

